RECORD, CASE No. 13,729.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 483.

MRS. MARY CORINNE WARREN FLEITAS, APPELLANT,

vs.

GILBERT M. RICHARDSON, ALBERT E. SHATTUCK, FRANK HOFFMAN, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 9, 1892.

a UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

Mrs. M. C. W. FLEITAS, Appellant,
vs.
W. F. MELLEN *et al.*, Appellees. } No. 11702. In Equity.

James R. Beckwith and Rouse & Grant, Esqrs., for complainant, appellant.
Thomas J. Semmes, Esqr., for defendants, appellees.
W. F. & D. C. Mellen, " " "

Appeal returnable to the Supreme Court of the United States of America, at the city of Washington, D. C., on the second Monday of October, A. D. 1889.

Transcript of Appeal.

1 Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

Transcript. Proceedings in the Civil District Court of Louisiana. Filed April 18, 1888.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

Mrs. CORINNE WARREN FLEITAS
vs.
WM. F. MELLEN and Others. } No. 22918. Div. "E."

Petition. Filed December 30th, 1887.

To the honorable the judges of the civil district court in and for the parish of Orleans:

The petition of Mrs. Mary Corinne Warren Fleitas, wife of Francis Bartholomew Fleitas and by him duly authorized to institute this action, residing with her said husband in the parish of St. Bernard, in the State of Louisiana, respectfully represents unto this honorable court that on February 6th, 1868, your petitioner married her said husband, Francis B. Fleitas; that on the day of said
2 marriage and before the consummation thereof your petitioner's parents, John Ira Warren and Mary M. A. Bothan, his wife, made a donation to your petitioner of the sum of twenty thousand dollars ($20,000,00), which said sum was placed in the hands of your petitioner's said husband and by him since that time and until the proceedings and judgment hereinafter set forth been held and administered, as more fully and at large appears from a certified copy of a notarial act of contract evidencing said donation — the marriage contract between your petitioner and her said husband, passed before said marriage, February 6th, 1868, before Selim

Magner, late a notary in the city of New Orleans, a duly certified copy of which said act is annexed to this petition as part hereof.

And now your petitioner further shows unto your honors that the said sum of twenty thousand dollars was, before the solemnization of said marriage, by your said petitioner handed over to and delivered to the said Francis B. Fleitas, as stated and set forth in said marriage contract and for the purposes therein set forth, subject to the obligation on the part of her said husband, Francis B. Fleitas, contained and set forth in said notarial contract of marriage, and subject also to all the incidents, obligations, and security for the return and payment thereof contained in said marriage contract and imposed and existing under and by virtue of the laws of the State of Louisiana then and at that time and still in full force and effect in respect thereto.

And your petitioner further shows unto this honorable court that after said marriage your petitioner and her said husband removed from the city of New Orleans to the said parish of St. Ber-
3 nard, in the State of Louisiana, and have resided in said parish at all times since their said removal thereto; that upon their removal to said parish of St. Bernard the said notarial act and contract of marriage above referred to were duly recorded in the mortgage office and conveyance records of said parish of St. Bernard, as appears by the records of said parish of the date of September 27th, 1870, in Mortgage Book 6, folio- 132–135, and in Conveyance Book No. 10, folio- 207–209, and in Book of Donations No. 8, folio 267, and at all times since that date been so of record in the proper records for contracts of that character in said parish.

And your petitioner further avers that she is advised and informed and therefore avers that by reason of said contract and by virtue thereof and of the laws of the State of Louisiana in that respect she has at all times had a general legal mortgage on all the property of her said husband, securing the payment to her of the sum of $20,000; which said legal mortgage has been, as above stated, put of record, as required by law.

And your petitioner further represents unto this court that until the judgment hereinafter set forth and the satisfaction thereof your petitioner's husband has never paid or returned to her the sum of $20,000 or any part thereof.

And your petitioner further represents unto this honorable court that subsequent to the time of her removal of residence and domicil to the parish of St. Bernard aforesaid her said husband, the said Francis B. Fleitas, did acquire, own, and possess in the parish of St. Bernard certain real estate, lands, and tenements, movables
4 and immovables, particularly described and set forth by description as follows:

(1.) A certain tract of land or plantation known as "Myrtle grove," situated in the parish of St. Bernard, State of Louisiana, on the left bank of the River Mississippi, at about two and a half leagues below the city of New Orleans, measuring about twenty arpents, more or less, front on said river, but on a line measuring at right angles from the intersection of the levee with the lower side

measuring nineteen arpents and twelve toises in width and having on the lower side line which separates it from the property of Gaberiel Villere a depth of 197½ arpents, both side lines diverging 4° 54′ 30″, and running to the line of the property of Antoine Michand, which bounds said plantation on the rear, being the property which the said Francis B. Fleitas acquired from L. E. Lamerie by act passed January 7th, 1882, recorded in Book No. 15, pp. 121, 122, and 123, of the records of conveyance of St. Bernard parish, Louisiana.

(2.) A sugar plantation, situated in St. Bernard parish at about seven miles below the city of New Orleans, on the left bank of the River Mississippi, measuring about nineteen arpents front on said river by a depth extending up to Lake Borgne, bounded on the upper side by property belonging to Mrs. Eveville G. Villere and Denis Villere and on the lower line by the plantation of A. W. Walker, being the property which said Fleitas acquired from his mother, Mrs. Marie M. D. C. Fleitas, by an act of sale dated April 28th, 1877, and registered in Book of Conveyance No. 13, page 194, of the records of St. Bernard parish, Louisiana, and known as the "Corinne" plantation, and also the engines, boilers, kettles, and other machinery and property of whatsoever name or description, immovable by destination, contained therein.

And your petitioner further avers that when her said husband, the said F. B. Fleitas, first acquired said property hereinabove described that said notarial act of marriage was duly recorded in said parish as aforesaid, and that by operation of law thereon, the said sum of $20,000, named therein, not having been paid to your petitioner in pursuance of the obligation of the said marriage contract and the provisions of the law of Louisiana relative thereto, she, by operation of law, had a legal mortgage on all of the said property to secure the payment thereof to her.

And your petitioner further avers that after her said husband, the said F. B. Fleitas, had so acquired said property as aforesaid he executed a mortgage on said Corinne plantation to secure his mother, the said Mrs. Marie M. D. C. Fleitas, the payment of a certain sum of money at that time due and owing from her said husband to his said mother, Mary B. Fleitas; that in order to secure to the mother of your petitioner's said husband the payment of the sum of money so due or to become due from your petitioner's husband to his said mother, your said petitioner appeared therein and, by notarial act, waived as to the said Mary B. Fleitas, the mother of your petitioner's said husband, the rank of her said legal mortgage upon said Corinne plantation growing out of said marriage contract and the record thereof; that said waiver was expressly limited to and affected the said special mortgage executed in favor of the said mother of your petitioner's said husband. Being unable to meet and pay said mortgage in favor of his said mother when the same became due and payable, his said mother proceeded to foreclose the same in due form, and proceeded by proper proceedings in that behalf instituted in the district court of the State of Louisiana having jurisdiction of such matters in the parish of St. Bernard aforesaid.

That under the judgment, decree, and proceedings in said fore-

closure proceeding said mortgaged property was under due and proper writ in that respect sold at public and judicial sale and purchased and bought in by the said mortgagee, the said Mary B. Fleitas, in said satisfaction of her mortgage lien and claim thereon, and that the sheriff of said parish of St. Bernard by due and proper act and deed conveyed the said Corinne plantation to the said Mrs. Marie M. D. C. Fleitas, the highest bidder at said judicial sale, whereby your petitioner's said husband, F. B. Fleitas, became divested of the title and his said mother became vested with the full legal title thereto.

That afterwards and prior to the year 1884 the said F. B. Fleitas, your petitioner's husband, again purchased all of said property from his said mother, Mary M. D. C. Fleitas, and by act of conveyance in due form the said Mary B. Fleitas conveyed the full legal title to all said Corinne plantation back to the said Francis B. Fleitas, your petitioner's husband, and delivered the same to him; which said act of conveyance was also duly recorded in the office of the record of conveyance in and for the parish of St. Bernard, wherein and whereby the said Francis B. Fleitas, your petitioner's husband, became again vested with title in and to said Corinne plantation, and the same became in all things subject to the effect and oper-
7 ation of the legal mortgage resulting from the said marriage contract between your petitioner and her said husband above set forth, and wherein and whereby she again obtained the first and ranking lien, mortgage, and privilege on said property and all part thereof, as she is advised, avers, and verily believes.

That on or about the 7th day of January, 1882, said Francis B. Fleitas, your petitioner's husband, by due conveyance, acquired from L. E. Lamarie full right, title, and interest in the said first above described tract of land, known as the Myrtle Grove plantation; which said act of sale was duly recorded, and said first-mentioned property also became subject to your petitioner's legal mortgage aforesaid.

And your petitioner further represents unto your honors that up to the 3rd day of September, 1887, or thereabout your petitioner has never demanded of and from her said husband, the said Francis B. Fleitas, the return to her or repayment of said $20,000 named and referred to in said notarial contract of marriage, but that the same remained in the hands of her said husband; but at the date last aforesaid, the affairs of her said husband, the said Francis B. Fleitas, having become involved and in great confusion, so that there was great danger that his assets would not be sufficient to meet the payment of the said sum of $20,000 and her right as described in said marriage contract and by the law of the State of Louisiana in that behalf and respect made and provided, and in order to protect herself in her rights so granted and secured to her by law and by said contract, your petitioner, being duly author-
ized in that respect and behalf by her said husband, —
8 in the twenty-fourth judicial district court of the State of Louisiana in and for the parish of St. Bernard, in due form, an action against her said husband to obtain a judgment dissolving

the community of acquets and gains before that time existing between your petitioner and her said husband and to obtain a separation of property and a restoration to your petitioner of the management and control of her separate property, paraphernal and otherwise, as authorized and provided by law.

That in said proceedings she made due and proper averments in that respect—presented her said petition to the said court in due form; that her said husband, the said Francis B. Fleitas, was duly cited to appear in said court and answer and defend said proceedings; that he appeared in said court, answered said petition, and said cause was tried in said court in due and regular order for the trial of cases in said court, and that on the 10th day of September, 1887, judgment was rendered in said case in favor of your petitioner and against her said husband, Francis B. Fleitas, wherein it was ordered and adjudged that there be judgment in her favor against her said husband, the said Francis B. Fleitas, dissolving the community of acquets and gains existing between your petitioner and her said husband and decreeing a separation of property between your petitioner and her said husband, and further adjudging and decreeing that your petitioner, the wife of the said F. B. Fleitas, have and recover of her said husband judgment for the full sum of $20,000, the amount of paraphernal property belonging to her received by her said husband, as set forth in said marriage contract, and that
9 the same be recognized as secured by legal mortgage according to law on all of the said real estate of the said Francis B. Fleitas situated in the parish of St. Bernard, and that said legal mortgage take rank and effect from the 27th day of September, A. D. 1887, and that her said husband, the said Francis B. Fleitas, pay all costs, as will more fully and at large appear in detail by attested copies of the proceedings and judgment in said case, hereto annexed and made part of this petition; that said judgment was, the 10th day of September, A. D. 1887, in due form signed by the Hon'l E. A. Livaudais, the judge of said court, the said 10th day of September aforesaid being the last day of the said term of court in and for said parish of St. Bernard.

That afterwards, by reason and virtue of said final judgment and decree and to carry the same into effect, a writ of *fieri facias* was issued out of said court rendering said judgment, directed to the sheriff of the parish of St. Bernard, and that by virtue thereof the sheriff of the parish of St. Bernard, in due form of law and under command of said writ, seized and took into his custody and possession the said property of the said Francis B. Fleitas hereinabove described and set forth, and after due notice and proceedings under said writ of *fi. fa.* as required by law did, on the 19th day of November, 1887, in the place required by law, in due form of law, expose said property so seized under *fi. fa.* for sale at public sale to satisfy said writ of *fi. fa.*

That — said sale so made as aforesaid your petitioner was the highest bidder thereof, and the same was adjudicated to her in consideration of the price and sum of $20,000.

That, having complied with the terms of said bid and ad-
10 judication, the sheriff, as required by law, made, executed, and delivered to your petitioner a deed of conveyance of said property and possession thereof, wherein and whereby the said property was and is conveyed to and vested in your petitioner as her own separate property so acquired by her as *her* aforesaid, and that said deed of conveyance was duly recorded in the parish of St. Bernard, in Book No. 17, folios 136, 137, 138, 139, and 140, and in Sheriff's Book 2, folios 60, 61, 62, 63, and 64, on the 23rd day of November, A. D. 1887, all of which more fully and at large appears by said deed of conveyance, hereto annexed and made part hereof, with the certificate of record thereto annexed, to which your petitioner refers for certainty and for description of said property.

By reason whereof your petitioner is advised, informed, and believes that she became the legal owner in her own right and title of all the said property described in this petition and in said sheriff's deed by indefeasible title to the extinguishment of all other liens and privileges thereon.

And your petitioner further shows unto your honors that on the 28th day of January, 1884, long after her said legal mortgage had attached to and became a lien upon all said property, her said husband, Francis B. Fleitas, entered into a notarial act of mortgage passed before Benjamin Ory, a notary public in and for the parish of Orleans, wherein and whereby he acknowledged himself indebted to one Gilbert M. Richardson, a resident of the State and city of New York, made defendant herein, in the sum of $63,000, evidenced by five promissory notes of her said husband, the said Francis
11 B. Fleitas, of $12,600 each, due respectively January 1st, 1886, 1887, 1888, and 1889, with eight per cent. interest thereon, represented, as your petitioner is informed, by certain coupon notes; that in order to secure the payment thereof the said Francis B. Fleitas made and executed an act of mortgage bearing on said property, a copy of which said mortgage is hereto annexed and made part of this petition.

That said mortgage purports to be made in favor of Gilbert M. Richardson and in favor of the firm of Shattuck and Hoffman, a partnership composed of Albert R. Shattuck and Frank B. Hoffman, who are, as your petitioner is informed and believes, non-residents of the State of Louisiana, having their domicile, as she is informed and believes, in the State of Massachusetts, but who transacts business in the city of New Orleans as cotton factors and commission merchants, and who claim and pretend to have an interest in said mortgage, but also claim and pretend to be the agents and representatives of the said Gilbert M. Richardson named in said act, and that said Gilbert M. Richardson in said act of mortgage appeared by William F. Mellen, a resident of the State of Louisiana and of the parish of Orleans, who also in said notarial act of mortgage claimed to be the attorney-in-fact and representative of his said non-resident principal, Gilbert M. Richardson, as fully appear- in said copy of said act of mortgage, hereto annexed and now made part of this petition, and that the said parties claiming to hold said mortgage, as your

petitioner is advised and informed, caused said mortgage to be recorded in the record of mortgage in said parish of St. Bernard on or about the 29th day of January, 1884, and that your petitioner
12 is advised and informed that said Shattuck & Hoffman and said William F. Mellen, with said defendants herein, claim to have in their possession as agents and attorneys-in-fact of the said mortgagee, Gilbert M. Richardson, the notes referred to in said act of mortgage as being due and payable on the first of January, 1888, and the first of January, 1889, and claim and pretend that, notwithstanding said judgment of your petitioner against her said husband, the said mortgage as to the said two last-mentioned notes still bears upon the said plantation and is effective therein as a mortgage, notwithstanding the title of your petitioner thereto so acquired at said sheriff's sale as aforesaid.

And now your petitioner further shows unto your honors that she is informed and avers that although she is seized with full, unincumbered title to said property as aforesaid by reason of her said purchase thereof at said judicial sale as aforesaid, yet the said William F. Mellen, the said Shattuck and Hoffman, and said defendant in this action, as she is advised and is informed, pretend that they or some of them have possession of the said notes described in said act of mortgage so executed by said F. B. Fleitas, your petitioner's said husband, falling due on the 1st of January, 1888, and the first of January, 1889, and that said mortgage is a lien and privilege on your petitioner's property above described, and that the same is a claim on the title of your petitioner and can be enforced against the said property of your petitioner, and threaten that as soon as the said note of the said F. B. Fleitas falling due on the said 1st of January, 1888, shall become due to proceed to seize said property
13 from the possession of your petitioner and take the same out of her possession *is* an attempt to foreclose said alleged mortgage against said property and thereby dispossess your petitioner thereof.

And your petitioner avers that she is advised, and therefore avers, that neither the said defendants named in their petition nor any holder of said promissory notes have any lien or mortgage on her said property nor any lawful right to dispossess her of her said property or disturb her in the possession thereof; that said property is plantation property and can only be made remunerative or be of value to her without undoubted title thereto and the full possession thereof.

That in order to cultivate said plantation it is important and indispensable that steps looking to the planting of the crops and the cultivation of said plantation property for and during the coming season of 1888 shall be taken at once and at the present moment, and that since her said purchase of said property she has taken steps and incurred expense in planting and preparing for the cultivation and growth of crops on said property in and for the year 1888; that if said defendants or any holder of any of the notes referred to in said mortgage so made by the said F. B. Fleitas are permitted to seize said property out of the possession of your petitioner, as threat-

ened, it will cause your petitioner irreparable loss and injury and defeat the cultivation and growth of any crops on said property during the coming season, besides subjecting her to the loss of all labor and expense by her incurred in planting said property and in preparation for and planting her said crops for the year 1888,
14 besides an irreparable loss of her credit by reason of dispossession and the cloud by that act cast upon her title to said property.

That she is informed and believes that the said defendants Shattuck & Hoffman are now the holders of said alleged mortgage notes of the said F. B. Fleitas, either holding them as alleged owners thereof as for the said defendant Gilbert M. Richardson or the other defendant named herein.

That the said defendant William F. Mellen is the agent of the said Gilbert M. Richardson, who is a non-resident of this State and resides in the State of New York, as petitioner is informed; that the said Mellen appeared in said act of mortgage as the agent of the said Richardson; and your petitioner avers that said Mellen in all things represents the said Richardson as his agent in the State of Louisiana about and concerning said alleged mortgage and, as petitioner believes, with authority to receive citation in that action addressed to the said Gilbert M. Richardson; that in the event that this should be denied your petitioner prays that a *curator ad hoc* may be appointed by the court, upon whom citation against the said defendant Richardson may be — in the event that he cannot be found within the jurisdiction of this honorable court.

And now your petitioner avers that she is informed and believes that there is some combination and confederacy or relation between the said defendants above named and a corporation called the British & American Mortgage Company (Limited), which your petitioner is advised is a corporation created under the laws of Great
15 Britain, having its domicil at London, in England, and a non-resident of the State of Louisiana, and your petitioner is unable to ascertain whether the said corporation has nominated or appointed or made known any agent upon whom service or process and judicial proceedings can be made, although your petitioner has made diligent inquiry in that respect, unless it be the said William F. Mellen or the said Albert R. Shattuck or the said Frank B. Hoffman; that one W. B. Shattuck, a citizen of the State of New York, but at present in said city of New Orleans, is also, as your petitioner believes, an agent and managing director of the said British & American Mortgage Company and in confederacy with the other said defendants herein and is also made defendant herein.

That your petitioner is advised and informed that there is some close business relation and confederacy between the said Shattuck & Hoffman, W. B. Shattuck, and the said corporation for the purpose of obtaining extortionate rates of interest upon loans, and that it is a device and plan between the said Shattuck & Hoffman and the said Richardson, said W. B. Shattuck and the said corporation to transfer notes, obligations, and mortgages by and between them and among themselves or to some third person, each one claiming

ownership and possession of said notes and obligations and mortgages as may best subserve their interests in an effort to cut off equities and defenses of the payees, but that there is some combination and arrangement between them whereby they have some common and joint interest in and control of the said mortgage of the said F. B. Fleitas.

That your petitioner believes the said combination and ar-
16 rangement between the said parties is clandestine and full detail of which is only known to the parties themselves, and that they have, as she believes, a common interest in defeating the title of your petitioner to her said property and in disturbing her in possession thereof; that if the said Mellen and the said Shattuck and the said Hoffman, the said W. B. Shattuck and said defendant corporation shall deny that they have authority to receive citation and to bring the said corporation into court in this action your petitioner prays that *that* this honorable court will appoint a *curator ad hoc* to represent said corporation upon whom citation may issue and be served and through whom the said corporation may be brought into court and compelled to answer in the premises.

And your petitioner further shows unto your honors that the said defendants, as she is advised and informed, sometimes pretend that your petitioner has not full and complete title to her said property so acquired as aforesaid, and that the same is subject to said alleged mortgage executed by said Francis B. Fleitas, your petitioner'- said husband, notwithstanding the said marriage contract and legal mortgage of your said petitioner and judgment in said proceedings, wherein and whereby your petitioner purchased the same at judicial sale, as above set forth, and pretend said mortgage so bears upon the property of your petitioner because that while the said property hereinabove described as the Corinne plantation, as hereinabove set forth, — mortgaged to the mother of your petitioner's husband your petitioner, in order to secure the mother of her said husband,
17 agreed in respect to that particular mortgage to waive and disrate the priority of her said legal mortgage, and because when the mother of your petitioner's said husband foreclosed said mortgage and purchased said property hereinabove set forth the said mortgage of your petitioner growing out of said marriage contract was by some sort of entry in the office of records of the parish of St. Bernard, made by the sheriff of the parish of St. Bernard, erased as to the title and effect thereof upon the title of the said Mrs. M. B. Fleitas acquired at her said foreclosure sale of said property, which act of said sheriff so done was without the knowledge, consent, or authority of your petitioner.

And your petitioner avers that the entry made in said registry, if of any effect, only tended in law and in fact at most to disrate and extinguish her legal mortgage on said Corinne plantation for the time and during the period the title thereof was held by the said Mrs. Mary B. Fleitas, and that her said husband, F. B. Fleitas, again acquired said Corinne plantation afterwards by full title. The effect of her waiver of that order or lien in favor of Mrs. M. B. Fleitas of any effect in law was expended, and that her said mortgage at once

attached again to said property and said Corinne plantation by operation of law the moment the title became again reinvested in her said husband, and that said marriage contract and the record thereof and the record of the title of her said husband and of his said mother, Mary B. Fleitas, at all times demonstrated, exhibited, and gave notice to the world of the real character of her mortgage right on said property, and that the same had reinvested
18 again upon the said property as a lien and privilege from that instant that the title thereof again became invested in her said husband by said conveyance from his mother as aforesaid; that whatever entry was made on the records of the parish of St. Bernard was made without knowledge or direction of your petitioner and cannot, as she is advised, in any manner affect her legal mortgage upon said plantation when the title thereof was afterwards reinvested in her said husband, the said F. B. Fleitas, by said repurchase thereof as aforesaid.

That your petitioner is advised and informed that the said defendants also at times pretend that your petitioner has no right, title, or interest or legal mortgage in and upon said property because of an entry made in the parish of St. Bernard by one Philip Toca, at that time acting recorder of that parish, about April 25th, 1877, which said entry is, as your petitioner is advised, in the words and figures following:

"Erased and cancelled by virtue of a judgment rendered by the U. S. circuit court, Judge E. E. Billings; signed April 25th, 1877;" which is averred to relate to and affect the records of your petitioner's said marriage contract.

Your petitioner avers that said entry, if made by the said Philip Toca, was entirely unauthorized and unwarranted; that your petitioner had no knowledge whatever thereof until after her said judgment of separation and for the return of her separate property hereinabove set forth; that the same was not made by her permission or authority, nor is it true in fact that there was and is any judgment of the United States circuit court in and for the State of Louisiana
19 or holding sessions in the State of Louisiana relating to, affecting, or operating upon her said legal mortgage in the record of her said marriage contract signed either on the 25th day of April, 1877, or at any other date, as your petitioner is advised and believes; that she has caused diligent search to be made for the record of any such suit or proceeding in the said Federal circuit court, and is advised and informed, and therefore avers, that there is not in existence any such record or any such judgment of the said circuit court in any way warranting, authorizing, or justifying said unwarranted, improper, and untruthful entry or record on the record of her said marriage contract as recorded in the said parish of St. Bernard so made by the said Toca.

That, as your petitioner is advised and informed, the said defendants sometimes pretend that they have a right to enforce said mortgage against the property of your petitioner and disregard her legal mortgage and claim thereon upon which her said judgment against her said husband above set forth was based, because they aver that

some times during the year 1877, when said husband, Francis B. Fleitas, availed himself of the provisions of the Federal general bankruptcy act and law at that time in force, and applied to the district court of the United States having jurisdiction within the State of Louisiana for the benefit of said bankruptcy act, and that after proceeding therein, some time in 1877, — granted a certificate and judgment of discharge from obligations provable in bankruptcy according to the terms and provisions of the said act of Congress under which said proceedings were had; that your petitioner is advised and believes that this pretence upon the part of the said de-
20 fendants is utterly without foundation in law; that at the time *and* proceedings in bankruptcy were pending she was the wife of the said Francis B. Fleitas, the bankrupt, not separate from the said Fleitas in property, and that the said obligation of the said Fleitas, her husband, obtained and set forth in said contract of marriage and by operation of the law of the State of Louisiana in relation to said contracts in respect to the marriage relation between husband and wife at all times was — still is in full force and effect, and by operation of law the record thereof operated as a mortgage lien and privilege upon the property of her said husband, Francis B. Fleitas, not only *in presenti*, but *in futura*.

That the said debt was fiduciary in character and not provable in bankruptcy; and, further, that her said relation to her said husband in virtue of the marriage relation between them was such that she was not competent, had the said debt been provable in bankruptcy, to prove the same in bankruptcy without authorization from her said husband or from the proper judge or tribunal, which said authority she never had or possessed, and that for this and other reasons any discharge in bankruptcy that may have been granted to F. B. Fleitas, her said husband, had and could in law have no effect whatever upon her rights or operate to extinguish or cut off the said obligation of her said husband to restore to her said amount named in said marriage contract, nor did it have the effect to cut off any right or lien whatever granted her by operation of law to secure the payment thereof.

And petitioner further says that said alleged certificate and discharge in bankruptcy has never been pleaded or set up against
21 her to defeat and bar her recovery of her said demand, and, as she is advised, could not in law be set up and pleaded; that your petitioner is advised and avers that at the time of the rendition of the said judgment in her favor against the said F. B. Fleitas, her husband, for separation of the community of acque-ts and gains and for the restoration to her of the said $20,000 named in said marriage contract, and at the time of the sale of the said property herein described to her at the judicial sale herein set forth, her right to the return of the said property and to said judgment of separation and to all her legal rights and claims growing out of said contract was in all things full, intact, and unimpaired and superior to any pretended claim growing out of any subsequent mortgage made or executed by the said defendant Richardson or any other person subsequent to the date of said marriage contract aforesaid.

That your petitioner fears, as she has hereinabove set forth, that for the purpose of harassing her, defeating her rights, clouding her title, and dispossessing her of her said property, that the said defendants will resort to executory process or some other means to disturb her possession and cloud her title, and that such steps and proceedings will, for the reasons hereinbefore set forth, cause her irreparable injury and permanently injure the value of her said property.

Wherefore, the premises considered, petitioner prays that said William F. Mellen, said Gilbert M. Richardson, said Albert E. Shattuck, and Frank B. Hoffman, individually and as the commercial firm of Shattuck & Hoffman, and the said British-American
22 Mortgage Company (Limited) may be cited in due form, as defendants in this cause, to appear herein and answer this petition, and that if the said Gilbert M. Richardson and the said British and American Mortgage Company (Limited) shall not be found within the jurisdiction of this court or within the State (being non-residents) and no agent can be found upon whom service can be made, that a *curator ad hoc* be appointed by this honorable court, upon whom service of the citation and writs herein addressed to the said defendants may be served, and that, considering the bond and affidavit hereto annexed, *that* your honors grant a writ of injunction, directed against the said defendants and each and all of them named in this petition, their several or joint agents, attorneys, and representatives, enjoining them, all and each of them, from seizing or taking possession of the said property of your petitioner described and set forth in this petition or any movable or immovable property belonging to this defendant described and set forth in the sheriff's deed annexed to and filed with this petition, wherein and whereby said property described in this petition was and is conveyed to your petitioner, in any attempt to foreclose or execute the said mortgage described in said petition, executed on the 28th day of January, 1884, before said Ory, a notary public in and for the parish of Orleans; and from alienating, transferring, or delivering possession of said mortgage *to* any of the notes named in said mortgage to each other or to any person or persons, so as to transfer said mortgage so that foreclosure proceedings for the seizure of said property may or can be instituted and affected by the other persons; or in any way, manner, or by any
23 means, directly or indirectly, interfering with your petitioner's possession and enjoyment of said property, by any judicial proceedings or otherwise; and that the court so adjudge and decree that your petitioner have full and complete title to all of said property so purchased by her and described in this petition, free from all claims, demand, liens, mortgage, privilege, or claim growing out of said alleged mortgage executed by the said F. B. Fleitas, as described in said petition, and that the said defendants, each and all of them, and every holder of any of the said notes described or referred to in said act of mortgage have no lien, right, privilege, or interest in and to said property described in this petition as the property of your petitioner, and that she be decreed in all things the

owner thereof by virtue of her said purchase thereof at the said sheriff's sale, as described and set forth in this petition; that said injunction and final judgment herein be made perpetual, and that said defendants be condemned to pay the costs of this suit.

And your petitioner prays for all such further and general relief in the premises as the nature of her case may require and justice demand.

(Signed) J. R. BECKWITH,
Att'y for Plaintiff.

STATE OF LOUISIANA, }
Parish of Orleans. }

Mary Corinne Warren Fleitas, the petitioner named in the
24 foregoing petition, being duly sworn, deposeth and saith that she is the plaintiff named in the foregoing petition; that she knows the contents of said petition, and that all of the matters and allegations of facts in said petition set forth are true in manner and form as therein set forth, as she truly believes, and that said facts, according to her belief, render an injunction against the defendants named in said petition, as prayed for, necessary to preserve the property of this opponent and save her from irreparable loss and damage by the act of the defendants named in said petition, as complained of in said petition.

(Signed) MARY CORINNE FLEITAS.

Sworn to and subscribed before me, at New Orleans, La., this 30th day of December, 1887.

(Signed) CHAS. T. ANDRY,
[L. S.] *Notary Public.*

Record No. 294, of the 24th judicial district court in and for the parish of St. Bernard, annexed and made part of petition. Filed December 30th, 1887.

Mrs. CORINNE WARREN FLEITAS
vs.
WM. F. MELLEN and others. } 294. 24th Judicial Court.

Filed Sept. 3rd, 1887.

25 To the honorable the twenty-fourth district court in and for the parish of St. Bernard, State of Louisiana:

The petition of Mistress Mary Corinne Warren, wife of Francis Barthelomew Fleitas, and residing with her said husband in said parish of St. Bernard, State of Louisiana, respectfully represents—

That on February 6th, 1868, your petitioner married her above-named husband, F. B. Fleitas; that on the day of said marriage your petitioner's parents, John Ira Warren and Mary M. A. Bohan, his wife, made a donation to your petitioner of the sum of twenty thousand dollars; which said sum was placed in the hands of your petitioner's said husband and has been by him since used and administered, all as more fully appears from a certified copy from the

notarial contract evidencing said donation, the marriage contract between your petitioner and her said husband, passed before said Seline Magner, late a notary public in this city, a duly certified copy of which said act is annexed to the petition as part thereof.

Your petitioner further represents that said notarial act above mentioned is duly recorded in the mortgage office and conveyance records of said parish of St. Bernard, as appears from the certificate of the records of the said parish, of date September 27th, 1870, subjoined to the above-mentioned copy, annexed hereto as showing the recordation of said act in Mortgage Book No. 6, folio 132 to 135, and in Conveyance Book No. 10, folio 207 to 209, and in Book of Donation No. 8, folio 267.

Your petitioner further represents that she has a general legal mortgage on all the property of her said husband to secure
26 the payment to her of said sum of twenty thousand dollars; which said legal mortgage has been, as above stated, put of record, as required by law.

Your petitioner further represents that her said husband has never paid or returned to her said sum of twenty thousand dollars, but still owes her th*is* whole thereof. Your petitioner further represents that her said husband is largely in debt, and that his affairs are in great confusion and disorder, so that there is great danger that his estate will not be sufficient to meet her rights and claims, and to protect petitioner's rights it is necessary that she obtain a separation of property from her said husband and a judgment against him for said sum of twenty thousand dollars. The premises considered, your petitioner prays that she be authorized to appear in judgment herein to institute and prosecute this suit; further prays that her said husband, Francis B. Fleitas, *the* duly cited to appear and answer this suit, and that after due proceedings there be judgment in favor of your petitioner dissolving the community of acque-ts and gains between your petitioner and her said husband and decreeing a separation of property and restoring to your petitioner the management and control of her paraphernal and individual property of every *cent.*

And your petitioner further prays for judgment in her favor and against her said husband, Francis B. Fleitas, for said sum of twenty thousand —, with legal interest thereon from judicial demand, and with recognition of petitioner's mortgage on all the immovable property of said F. B. Fleitas in the said parish of St. Bernard to secure payment of said sum out of the proceeds of the said real
27 estate by preference and priority over all other creditors of said F. B. Fleitas.

Further prays all general and equitable relief to which she may be entitled in the premises.

(Signed) WHITE & SAUNDERS, *Att'y-.*

Order.

Let Mrs. Mary Corinne Warren, wife of Francis B. Fleitas and

plaintiff in the within petition, be, and she is hereby, authorized to institute and prosecute this suit and to appear in judgment herein.

In chambers, Sept. 2nd, 1887.

(Signed) A. E. LIVAUDAIS, *Judge.*

A true copy of the original.

[L. S.] (Signed) J. P. DUCROS, *D'y Cl'k.*

Marriage Contract, Annexed to and Made Part of Petition. Filed Sept. 3rd, 1887.

STATE OF LOUISIANA, }
City of New Orleans. }

Be it known that on the sixth day of February, eighteen hundred and sixty-eight, before me, Selim Magner, a notary public,
28 duly commissioned and sworn, for the parish of Orleans and city of New Orleans, personally came and appeared—

1st. Francis Bartholomew Fleitas, of the full age of majority, residing in this city, the legitimate son of the late Barthelmy Fleitas and Mistress Marie Modeste Dorothea Cuculla, of this city, herein stipulating in his own name and behalf, of the first part;

2d. Miss Mary Corinne Warren, of the full age of majority, the legitimate daughter of John Ira Warren and Mistress Mary Margaret Anais Bahan, herein stipulating in her own name and behalf, of the second part;

3d. And the said John Ira Warren and his wife, father and mother of the said Mary Corinne Warren, parties of the third part;

And the said Francis Bartholmy Fleitas, party of the first part, and the said Mary Corinne Warren, party of the second part, mutually declared that in contemplation of the intended marriage, which they bind themselves each to the other to solemnize whenever thereunto required the one by the other, they have made and do hereby make the following—

Matrimonial agreement.

Article first. All debts contracted *provisions* to said marriage shall be borne and paid by the party with whom they shall have originated, and the other or his or her estate shall not in any manner or under any circumstances be held or made liable therefor.

Article second. There shall be a community of acque-ts and gains between said Francis Barthelemy Fleitas and Mary Corinne Warren, which community shall be governed and regulated by the dispositions of the civil code of this State, any laws of any State to
29 which they may remove notwithstanding.

Article third. The said intended wife declared that she brings into the said intended marriage as her paraphernal property all the furniture, clothing, and jewelry unto her belonging, being of a value of four thousand dollars, the said intended husband declaring that he has taken cognizance of all the furniture, clothing, and jewelry thus belonging to said Miss Warren, and thus hereby agree to the valuation thereof, and binds himself to remain charged with

and accountable to his said intended wife for said estimated value of said movable effects.

Article fourth. And the said John Ira Warren and said Mistress Mary Margaret Anais Bahan, wife of said Warren, by him herein and hereunto duly authorized and assisted, declared that, in consideration of the said intended marriage and the love and affection they bear to their said daughter and only child, they do by these presents make donations *inter vivos*, gratuitous and irrevocable, and in the most binding manner in which donations can be made, unto the said Miss Mary Corinne Warren, who accepts the same, the sum of twenty thousand dollars, current funds of the United States of America, which sum the said John Ira Warren and his wife have counted and delivered unto the said intended wife in the presence of me, the said notary, and the hereto-subscribed witnesses, and the receipt of which sum the said Miss Warren does hereby acknowledge.

And thereupon the said Miss Warren did, in the like presence of the undersigned notary and witnesses, hand over and count unto her said future husband the said sum of twenty thousand dollars, which he hereby acknowledge- to have received, and he declared that
30 he has taken charge of said amount for account of his said future wife, and for which he holds himself and remains liable to her according to law.

Article fifth. By mutual consent it is hereby agreed that all the property of the future wife now owned by her or which may be hereafter acquired by her with funds unto her belonging shall and remain her paraphernal property.

Done and passed in New Orleans, at the domicil of the above-named John Ira Warren, No. 225 Jackson street, between St. Charles and Prytania streets, on the day, month, and year above written, in the presence of Messrs. Thomas Appleton and Charles A. Phillipi, witnesses of lawful age, domiciliated in this city, who have signed these presents, together with the parties to this and me, notary, after reading hereof.

(Original signed)	F. B. FLEITAS.
J. J. WARREN.	M. C. WARREN.
M. M. A. WARREN.	THOS. APPLETON.
C. A. PHILLIPPI.	S. MAGNER, *Not. Pub.*

A true copy. New Orleans, 19th August, 1870.

Duly recorded at the parish of St. Bernard this 27th day of September, A. D. 1870.

(Signed) PHILIPPI TOCA, *Recorder.*

STATE OF LOUISIANA,
Parish of St. Bernard.

31 I do hereby certify that the above and foregoing marriage contract is a true and correct copy of the one inscribed in the mortgage office of this parish in Book of Mortgages No. 6, folios 132 and *seq.*

Clerk's office, Sept. 3rd, 1887.

(Signed) CHS. M. GARDANNE,
[L. S.] *Clerk, ex Officio Recorder.*

Citation.

STATE OF LOUISIANA,
Parish of St. Bernard.

24th Judicial District Court.

Mrs. MARY CORINNE WARREN, Wife of F. B. Fleitas,
vs.
F. B. FLEITAS, Her Husband. } No. 294.

To Mr. F. B. Fleitas, of the parish of St. Bernard:

You are hereby summoned to comply with the demand contained in the petition of which a true *a* copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the 24th judicial district court of Louisiana in and for the parish of St. Bernard, within ten days after the service hereof, adding one day for every ten miles' distance from your place of residence to the court-house of this parish, and if you fail herein judgment by default will be entered against you.

Witness the Honorable A. E. Livaudais, judge of the said
32 court, this 3rd day of September, A. D. 1887.

[L. S.] (Signed) J. P. DUCROS, *D'y Cl'k.*

Sheriff's Return to Citation. Filed Sept. 7th, 1887.

Rec'd Sept. 7th, 1887, and on the 7th day of same month and year served a copy of the within citation and accompanying petition on F. B. Fleitas, defendant herein, in person.

Ret. same day.

(Signed) FELIX GONZALES,
Dep. Sheriff, Parish of St. Bernard.

A true copy of the original citation, with sheriff's return.

[L. S.] (Signed) J. P. DUCROS, *D'y Cl'k.*

Answer. Filed Sept. 7th, 1887.

Mrs. MARY CORINNE WARREN, Wife of F. B. Fleitas,
vs.
F. B. FLEITAS, Her Husband. } No. 294.

Now comes the defendant, and for answer denies all the allegations of plaintiff's petition except those which he admits
33 hereinafter in this answer.

He admits when he married the plaintiff as alleged and entered into the marriage contract as alleged; wherefore he prays for judgment in his favor, with costs.

(Signed) F. B. FLEITAS,
In Propria Personnai.

A true copy.

[L. S.] (Signed) J. P. DUCROS, *D'y Cl'k.*

Note of Evidence and Testimony. Filed Sept. 10th, 1887.

24th Jud'l District Court of Louisiana in and for the Parish of St. Bernard.

Mrs. MARY CORINNE WARREN, Wife of F. B. Fleitas,
vs.
F. B. FLEITAS, Her Husband. } No. 294.

Plaintiff offers in evidence:

1st. Copy of marriage contract of record and passed before S. Magner, notary public, in the city of New Orleans, of date July 6th, 1868.

2nd. Also certificates of registry thereon, one signed by Phillippi Toca, of date September 27th, 1870; the other signed by Chs. M. Gardanne, clerk and *ex officio* recorder, on the 3rd day of September, 1887.

J. J. WARREN, being duly sworn for plaintiff, deposes and says:

I reside on the Corinne plantation, in this parish. Mistress
34 Fleitas is my daughter. I know about the payment of $20,000 as stated in the marriage contract. I paid $20,000 to the notary and he handed the same to Mistress Fleitas, who handed it to her husband. I think that Mr. Fleitas is at the present time greatly embarrassed in his business.

Mistress MARY CORINNE FLEITAS, being duly sworn in her own behalf, deposes and says:

The $20,000 mentioned in the marriage contract were handed to me and by me handed to Mr. Fleitas. It has not been paid back to me; it has been spent in his business. His affairs are very much embarrassed. I know that there are now suits pending against him in this court and in the United States court, and there are other debts besides.

Plaintiff offers in evidence copy of the record showing the registry of the marriage contract in Book of *the* Mortgages No. 6, folios 132 to 135; Book of Conveyances No. 10, folios 207 to 209, and Book of Donation- No. 8, fo. 267.

J. R. DUCROS, deputy clerk, being duly sworn on behalf of plaintiff, deposes and says: Book of Conveyances No. 10 and Book of Donations No. 8, in which the marriage contract herein referred to was originally recorded, were burned with the court-house of this parish on the 2nd day of March, 1884.

Book of Mortgages No. 6, in which the said contract was also recorded, is not destroyed and is now part of the records of this office. The affairs of Mr. Fleitas, according to my official knowledge, are very much embarrassed, there being several mortgages and judgments now recorded against him and still unsatis-
35 fied, and also suits now pending against him in this court.

CHARLES A. PHILLIPPI, being duly sworn on behalf of plaintiff, deposes and says:

I reside in Washington, La. I know Mr. & Mrs. Fleitas. I know Mr. & Mrs. Warren. I knew them in February, 1868. I have knowledge of the occurrences that took place at the time of the passage of their marriage contract before Seline Magner on the 6th of February, 1868. I was a witness to that act — the $20,000 were handed to the notary by Mr. & Mrs. Warren, and which was finally handed to Mr. Fleitas.

ESTEVE E. NUNEZ, sheriff, being duly sworn on behalf of plaintiff, deposes and says: My official position is sheriff and *ex officio* tax collector. I know that the condition of his affairs are embarrassed; that is through my official connection with him.

A true copy.

[L. S.] (Signed) J. P. DUCROS, *D'y Cl'k.*

Judgment.

24th Judicial District.

Mrs. MARY CORINNE WARREN, Wife of F. B. Fleitas,
vs.
F. B. FLEITAS, Her Husband, } No. 294.

This case, having been assigned for trial for this day, came on for hearing pursuant to said assignment.

36 Present: For plaintiff, White & Saunders, of counsel; defendant appearing in proper person.

When, after hearing evidence, both documentary and oral, by reason of the law and the evidence being in favor of the plaintiff and against the defendant—

It is ordered, adjudged, and decreed that there be judgment in favor of Mrs. Mary Corinne Warren, wife of F. B. Fleitas, against her said husband, dissolving the community of acque-ts and gains existing between herself and her said husband and decreeing a separation of property between *him*self and her said husband.

It is further ordered, adjudged, and decreed that the said Mrs. Mary Corinne Warren, wife of F. B. Fleitas, do have and recover of her said husband judgment for the sum of twenty thousand dollars, the amount of paraphernal property belonging to her and received by her said husband.

It is ordered, adjudged, and decreed that the said sum be, and the same is hereby, recognize- as secured by legal mortgage, according to law, upon all the real estate of said F. B. Fleitas situated in this parish, the said legal mortgage to take rank and effect from the 27th day of September, A. D. 1870, defendant to pay all costs.

Judgment rendered this 10th day of September, 1887.

Judgment signed this day, the 10th day of September, A. D. 1887, being the last day of the term.

(Signed) A. E. LIVAUDAIS,
Judge 24th Judicial District, La.

Duly recorded at the parish of St. Bernard, Book of Mort-
37 gages No. 13, fo. 221, on this the 16th day of September, A. D. 1887.

(Signed) CHS. M. GARDANNE,
Clerk, ex Officio Recorder.

A true copy.
[L. S.] (Signed) J. P. DUCROS, *D'y Cl'k.*

Mortgage Act Annexed to Petition. Filed Dec. 30th, 1887.

Be it known that on this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and eighty-four, before me, Benjamin Ory, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared Francis Barthelemy Fleitas, of Saint Bernard parish, Louisiana, who, in the presence of me, said notary, and the subscribing witnesses hereinafter named, declared that he is justly indebted unto Gilbert W. Richardson, of the city of New York, in the sum of sixty-three thousand ($63,000) dollars for money lent, as evidenced by the five promissory notes of said Francis Barthelemy Fleitas, of even date herewith, to the order of Gilbert W. Richardson, and payable at the Louisiana National Bank of New Orleans, Louisiana, with interest from maturity at the rate of eight per cent. per annum, as follows: Five principal notes, each for the sum of twelve thousand six hundred dollars ($12,600), due January first (fixed), A. D. 1885, 1886, 1887, 1888, and 1889, and having attached, respectively, one, two, three, four, and five interest coupons;
38 which said notes — coupons, after having been paraphed by me, the said notary, to identify them herewith, have been delivered to the said Gilbert W. Richardson, herein represented by William F. Mellen, of the parish of Orleans, State of Louisiana, who hereby acknowledges the receipt thereof.

And that whereas the said appearer has obligated and does by these presents, in consideration of the mutual covenants, agreements, and benefits provided and contained in certain articles of agreement executed the 28th day of January, A. D. 1884, by and between said appearer and Messrs. Shattuck & Hoffman, cotton factors and commission merchants, of New Orleans, La., a commercial firm composed of Albert R. Shattuck and Frank B. Hoffman, and to which agreement reference is now particularly made, obligate himself, the said appearer, and his heirs, executors, administrators, and assigns, to gether and put in condition to ship to market as rapidly as possible the crop of sugar and molasses that said appearer or his heirs, executors, administrators, and assigns may raise upon or control from the property hereinafter described during the years 1884, 1885, 1886, 1887, and 1888, and during any following year or years, so long as any portion of the debt secured or intended to be secured by this act shall remain unpaid, and to ship said sugar and molasses from time to time, as the same may be ready for market, to said Shattuck & Hoffman, in New Orleans, to be by them sold on arrival at their option; and that whereas, under said articles

of agreement, said appearer expects to and may become indebted to said Shattuck & Hoffman, during said year or years,
on open account or otherwise or for money paid out and
39 advanced to and for said appearer in and about the making,
handling, conveyance, carriage, storage, insurance, and sales of said crops of sugar and molasses or otherwise, but which indebtedness to Shattuck & Hoffman shall in no event exceed in the aggregate an amount equal to the said indebtedness to said Gilbert W. Richardson; and that whereas it is understood and agreed that said appearer will promptly pay all taxes, assessments, and charges that are or would be a lien upon the said property as the same may be due and payable, and will keep the buildings and machinery situated thereon insured for the full term of this mortgage in some responsible company or companies, satisfactory to the mortgage-s herein, in the sum of twenty-five thousand dollars, and will assign and deliver said policies of insurance to said Shattuck & Hoffman for the use and benefit of all and any persons interested in the debts secured herein; and that if said appearer shall fail to pay any of the taxes, assessments, or legal charges upon said property when they become due or shall permit the same to be sold therefor or forfeited for want of bidders or shall fail to obtain or keep alive said insurance, then said Gilbert W. Richardson and said Shattuck & Hoffman or either of them or any of their successors or assigns or any person or persons interested in any of the debts hereby secured shall be entitled to pay the same, but this clause shall not be construed as obligatory on the holder or holders of said promissory notes or said Shattuck & Hoffman or other parties in interest or as rendering them or any of them liable for any loss, damage, or in-
jury which may result from the non-insurance of said build-
40 ings, and in case of sale for taxes to redeem said property, and
that all moneys so paid and all expenses incurred therein and thereby and all payments made at the option of said Gilbert W. Richardson or by said Shattuck & Hoffman or by any person interested as aforesaid for premiums of insurance, as hereinbefore provided, and all sums now due or to become due to said Shattuck & Hoffman, as hereinbefore set forth, shall be a part of the principal debts secured by this instrument and be subject to the same rate and conditions as to interest, but the premiums of insurance and all amounts for taxes and other legal charges upon said property that may be paid by the mortgagees herein named or any of them or any persons in interest shall not in any one year exceed in the aggregate two thousand dollars: Now, in order to secure the full and punctual payment of said promissory notes and such indebtedness as under the provisions hereof may accrue to Shattuck & Hoffman or any person in interest in capital and interest at maturity, and attorneys' fees, costs, charges, and expenses, as hereinafter provided, the said appearer moreover declared that he does by these presents specially mortgage and hypothecate in favor of the said Gilbert M. Richardson and his assigns and in favor of said Shattuck & Hoffman and their assigns and of any and all such person or persons as may hereafter be the holder or holders of the said promis-

sory notes all and singular the following-described property, including the buildings, fixtures, and all improvements and appurtenances situated thereon, to wit:

First. A certain tract of land or plantation, known as Myrtle grove, situated in the parish of St. Bernard, in State of Louisiana,
41 on the left bank of the River Mississippi, at about two and one-half leagues below the city of New Orleans, measuring about twenty arpents, more or less, front on said river, but on a line measuring at right angles from the intersection of the levee with the lower side measuring nineteen arpents and twelve toises in width, and having on the lower side line, which separates it from the lands of Ducros, a depth of two hundred and thirty-one and one-half arpents and on the upper side line, which separates it from the property of Gabriel Villere, a depth of one hundred and ninety-seven and one-third arpents, both side lines diverging four degrees fifty-four minutes and thirty seconds, and running to the line of the property of Antoine Michand, which bounds said plantation in the rear, being the property which said F. B. Fleitas acquired from L. E. Lemarie by act passed Jan'y 7th, 1882, recorded in Book No. 15, fo. 121, 122, and 123, of the records of conveyances of St. Bernard parish, La.

Second. A sugar plantation situated in Saint Bernard parish, at about seven miles below the city of New Orleans, on the left bank of the River Mississippi, measuring about nineteen arpents front on said river by a depth extending up to Lake Borgne, bounded on the upper line by the property of and belonging to Mess. Eveville G. Villere and Denis Villere and on the lower line by the plantation of A. W. Walker, being the property which said F. B. Fleitas acquired from Mrs. B. Fleitas by act of sale dated Ap'l 28th, 1879, and registered in Book of Conveyances No. 13, p. 194, of the records of St. Bernard parish, Louisiana, and known as the Corinne plantation; and also all the engines, boilers, kettles, and other
42 machinery and all other property of whatsoever name or description, immovable by destination now or that may be hereafter placed on or attached to said plantation or either of them, the said appearer hereby binding himself and his heirs not to alienate, deteriorate, or encumber the same to the prejudice of this mortgage.

And the said appearer further declared and covenanted with the said mortgagees and each and every one of them that he has good right and lawful authority to sell, alien-, and mortgage the property before described; that it is free and clear from all incumbrances; that he has an indefeasible title to the same in fee simple, which he will warrant and defend; and the said appearer further declared that he does by these presents consent, agree, and stipulate that, in the event that the debts or any portion thereof secured or intended to be secured by this act are not punctually paid when due or on his failure to keep any of the agreements or covenants contained in this act, it shall be lawful for and he hereby authorizes the said mortgagees or either and every one of them or any other holder or holders of said notes or any assigns of said Shattuck & Hoffman of said

indebtedness to them to cause all and singular the property hereinbefore described and herein mortgaged to be seized and sold under executory process, with appraisement, to the highest bidder, for cash, hereby confessing judgment in favor of said mortgagees and of such person or persons as may be the holder or holders of said promissory notes and all assigns of said Shattuck & Hoffman for the full amount thereof, capital and interest, together with all costs, charges, and expenses whatsoever.

43 And the said appearer further declared that he does by these presents obligate himself and his heirs to pay and reimburse unto said mortgagees or any such person or persons as may be the holder or holders of said promissory notes all such attorneys' fees, together with all such costs, charges, and expenses as said mortgagee or any such holder or holders shall or may incur or pay in the event of the non-payment of said promissory notes at maturity or of any legal proceedings being instituted at any time for the protection or preservation of the rights of the said mortgagees or of any future holder of said notes or of any part of said indebtedness to Shattuck & Hoffman, said attorneys' fees, however, to be fixed at 5 per cent. on the amount so in suit and unpaid.

And the said appearer further declared that whereas the said indebtedness is for money advanced by the said mortgagees as a whole or in part to enable said appearer to cultivate the said property during the years 1884, 1885, 1886, 1887, and 1888, and which is required by him for the production of his crops of sugar and molasses during the said years 1884, 1885, 1886, 1887, 1888, in order still further to secure the payment of said notes and said indebtedness to Shattuck & Hoffman he does by these presents specially pledge and pawn to said Gilbert W. Richardson and said Shattuck & Hoffman the entire crops of sugar and molasses now growing or which may grow on said property during the years 1884, 1885, 1886, 1887, and 1888, and further obligates himself to gather and put in condition to ship to market as soon as the same can be done the crops of sugar and molasses that he may raise upon or control from

44 the property herein described during the seasons of 1884, 1885, 1886, 1887, 1888, 1889 and during any following season or seasons during which any portion of the debt secured or intended to be secured by this act shall remain unpaid, and also obligates himself to ship the said sugar and molasses from time to time, as soon as the same is gathered and in condition to be sent to market, to said Shattuck & Hoffman, to be sold by them.

It is further understood and agreed that said appearer will not sell or otherwise convey or dispose of said lands so long as this mortgage shall remain in force unless he shall make it a condition precedent to such sale, conveyance, or other disposition that the vendee, donee, or other person to whom such sale, conveyance, and agreements of said appearer to and with said Shattuck and Hoffman, as set forth in said articles of agreement hereinbefore referred to and also such as are contained and set forth in this act, but in no event is this provision to be construed as in any manner waiving, affecting, or impairing the security herein contained in favor of said Gil-

bert M. Richardson, or any other covenants, obligations, or indebtedness herein provided for and intended to be secured; and it is expressly agreed and understood by and between the parties hereto that the said Shattuck & Hoffman shall have the exclusive right to apply the net proceeds of the sale of all sugar and molasses shipped and all payments of money made to them in any one season to the payment of any indebtedness which may be now or which may hereafter become due to said Shattuck & Hoffman by said appearer, upon open account or otherwise, or to the debt secured and intended to be secured by this act which may be due or becoming due
45 in that season or the payments of any demands of said appearer, according to their view of the exigency of the case; that such application may be made at such time and in such manner as they may elect, and that no application of such proceeds of sale or money to the payments of any debt in open account which may at any time be due to the said Shattuck & Hoffman by the said appearer or to any other account shall impair, lessen, or prejudice the other debts secured and intended to be secured by this act or the security herein and hereby provided therefor.

It is also agreed and understood that should this mortgage be foreclosed and the land or other properties herein described sold to satisfy the said indebtedness herein secured, then out of the proceeds of said sale the said indebtedness to said Gilbert M. Richardson, whether held by said G. M. Richardson or his assigns, shall be paid by priority over said indebtedness due or to become due to said Shattuck & Hoffman or their successors and assigns.

According to the annexed certificate of the recorder of mortgages in and for the parish of St. Bernard, in this State, dated the 22nd day of January, 1884, hereto annexed and made part of this act, it appears that there are no mortgage liens or incumbrances standing in the name of and against the said Francis B. Fleitas on the said property and recorded in his office except the following on the property hereinbefore firstly described, viz: The mortgage and vendor's lien granted by the said F. B. Fleitas in favor of his vendor in his aforecited act of purchase to secure the sum of
46 $13,500.00, now reduced to $9,000; and on the property hereinbefore secondly described, 1st, the mortgage granted by said Fleitas in favor of Mrs. Widow B. Fleitas to secure $25,000, as per act before N. B. Trist, notary, dated Febr'y 15th, 1879; 2d, the mortgage granted by him in favor of Lehman & Abraham & Co. to secure $10,884.07, as per act before said notary, Trist, dated March 6th, 1883; 3rd, the pledge and mortgage granted by him in favor of said Lehman & Abraham & Co. to secure $25,000, per act before said notary, Trist, dated March 6th, 1883; 4th, the contract entered into between said F. B. Fleitas and the Babcock and Wilcox Company, by which the former promised to pay the latter $1,823.55 on the completion of certain work to be made on the said plantation by the said Babcock and Wilcox Company, recorded May 4th, 1883, in Book of Mortgages No. 11, fo. 259.

And also to these presents came and appeared said Gilbert M. Richardson, herein represented by William F. Mellen, of the parish

of Orleans, State of Louisiana, and said Shattuck & Hoffman, herein represented by William F. Mellen, of the parish of Orleans, State of Louisiana, who severally in the same presence declared that for and in behalf of their said constituents respectively they accept this mortgage with all its terms and obligations and agreements as hereinbefore set forth. The word cotton, wherever it occurs in the foregoing deed, stricken out and the word- sugar and molasses inserted in its stead before execution.

Attest: W. A. BRES.

Thus done and passed at my office, at New Orleans, in the parish of Orleans, in the presence of me, said notary, and James Simeon and William B. Murphy, competent witnesses, who have
47 hereto subscribed their names with me, said notary, and said parties on the day, month, and year first hereinbefore written.

(Original signed) F. B. FLEITAS.
W. F. MELLEN,
For G. M. Richardson.
W. F. MELLEN,
For Shattuck & Hoffman.
JAMES SIMEON.
W. B. MURPHY.
BENJAMIN ORY,
Not. Pub.

STATE OF LOUISIANA, }
Parish of Orleans. }

I, the undersigned notary, do hereby certify the above and foregoing to be a true and correct copy of the original act of record *and* on file in my current notarial archives.

In testimony whereof I hereunto set my hand and affix my official seal, at the city of New Orleans, this 20th day of December, A. D. 1887.

[L. S.] (Signed) BENJAMIN ORY, *Not. Pub.*

Order.

Let writs of injunction issue as herein prayed for and according to law upon petitioner's furnishing bond in the sum of one thousand dollars, conditioned as the law requires.

New Orleans, December 31st, 1887.

(Signed) ALBERT VOORHIES, *Judge.*

Bond for Injunction. Filed December 31st, 1887.

48 Know all men by these presents that we, Mary Corinne Warren Fleitas, as principal, and C. J. Meyer and J. R. Parker, of the city of New Orleans, as sureties, each in the several sum of five hundred dollars, each are firmly bound unto William F. Mellen, Gilbert M. Richardson, Albert R. Shattuck, and Frank B. Hoffman, individually and as copartners under the firm name and style of Shattuck and Hoffman; the British and American Mortgage Com-

pany (Limited), and W. B. Shattuck, in the sum of one thousand dollars, lawful money of the United States, to be paid to the said William F. Mellen, the said Albert R. Shattuck, Frank B. Hoffman, Shattuck & Hoffman, and the British and American Mortgage Company (Limited) and W. B. Shattuck, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by herself and himself and each of our heirs, executors, administrators, firmly by these presents, the said principal in the said sum of one thousand dollars and each of said sureties respectively in the general sum of five hundred dollars each.

Sealed with our seals and dated the 30th day of December, in the year of our Lord 1887.

Whereas the said Mary Corinne Warren Fleitas was this day presented a petition to the honl. the civil district court for the parish of Orleans praying for a writ of injunction:

Now, therefore, the condition of this obligation is that we, the above-bounden Mary Corinne Warren Fleitas, as principal, and the said C. J. Meyer and J. R. Parker, as sureties, will well and truly pay to the said William F. Mellen, Gilbert M. Richardson,
49 Albert R. Shattuck, Frank B. Hoffman, Shattuck and Hoffman, and the British and American Mortgage Company (Limited) and W. B. Shattuck, defendants in said writ of injunction and in said suit, all such damages as they may recover against us in case it should be decided that the injunction was wrongfully obtained.

(Signed)	MARY CORINNE FLEITAS.	[SEAL.]
(Signed)	C. J. MEYER.	[SEAL.]
	J. P. PARKER.	[SEAL.]

Signed, sealed, and delivered in presence of—

Witnesses:

(Signed) C. C. CORDELL.
F. B. FLEITAS.

I do hereby authorize Mary Corinne Warren Fleitas, my lawful wife, to make and enter into the above obligation and bond and to institute and prosecute the action therein stated to final judgment and decree in all courts that may have or acquire jurisdiction.

(Signed) F. B. FLEITAS.

Writ of Injunction.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

The State of Louisiana to William F. Mellen, Gilbert M. Richardson, Albert M. Shattuck, and Frank B. Hoffman, individually and as members of the firm of Shattuck & Hoffman, and to W. B. Shattuck and to Shattuck & Hoffman and to the British and American Mortgage Company (Limited), New Orleans, Greeting:

50 Mrs. MARY CORINNE WARREN FLEITAS *vs.* WM. F. MELLEN and Others. } No. 22918.

You are hereby commanded, enjoined, and restrained, in the name of the State of Louisiana and of the civil district court for the parish of Orleans, either you, your agents, attorneys, and representatives from seizing or taking possession of any part of the following-described movable or immovable property, viz:

First. A certain tract of land or plantation, known as the Myrtle Grove, situated in the parish of St. Bernard, in State of Louisiana, on the left bank of the River Mississippi, at about 2½ leagues below the city of New Orleans, measuring about 20 arpents, more or less, front on said river, but on a line measuring at right angles from the intersection of the levee with the lower side measuring 19 arpents and 12 toises in width, and having on the lower side line, which separates it from the lands of Ducros, a depth of 231 and ½ arpents and on the upper side line, which separates it from the property of Gabriel Villere, a depth of 197½ arpents, both side lines diverging 4 degrees 54 minutes and 30 seconds, and running to the line of the property of Antoine Michand, which bounds said plantation in the rear, being the property which said F. B. Fleitas acquired from L. E. Lemarie by act passed Jan'y 7, '82, recorded in Book No. 15, p. 121, 122, 123, of the records of conveyances of St. Bernard parish of La.

Second. A sugar plantation situated in St. Bernard parish, at about 7 miles below the city of New Orleans, on the left bank of the
51 River Mississippi, measuring about 19 arpents front on said river by a depth extending up to Lake Borgne, bounded on the upper line by property belonging to Mess. Faerille G. Villere and Louis Villere and on the lower line by the plantation of A. W. Walker, being the property which said F. B. Fleitas acquired from Mrs. B. Fleitas by act of sale dated Ap'l 28th, 1877, and registered in Book of Conveyances No. 13, p. 194, of the records of St. Bernard parish of Louisiana, and known as the "Corinne plantation," and also all the engines, boiler-, kettles, and other machinery, and all the property of whatsoever manner or description immovable by destination now *are* that may be hereafter placed on or attached to said plantation- on either of them in any attempt to foreclose or execute the mortgage described in the petition filed herein, executed on the 28th day of

January, 1884, before Benjamin Ory, a notary public in this city, and from alienating, transferring, or delivering possession of said mortgage act or any of the notes named in said mortgage to any person or persons so as to transfer said mortgage, so that foreclosure proceedings for the seizure of said property may or can be instituted and affected by the other persons or in any manner or by any means, directly or indirectly, interfering with plaintiff's possession and enjoyment of said property by any judicial proceedings or otherwise; and you are so to remain enjoined and restrained until the further order of this court.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, A. Voorhies, judges of our said court, this 31st day of December, 1887, and in the one hundred and twelfth year of the Independence of the United States.

(Signed) JAS. D. RANKIN, *D'y Cl'k.* [L. S.]

52 *Sheriff's Return on Writ. Filed Jan'y 3rd,* 1888.

Mrs. MARY CORINNE WARREN FLEITAS
vs.
WM. F. MELLEN and Others. } No. 22918. Div. "E."

Received December 31st, 1887, and on the same day, month, and year I served a copy of the within writ of injunction on each of the within defendants herein named, as follows: Personally on William F. Mellen; on Gilbert M. Richardson, by personal service on Wm. F. Mellen, his attorney; on the commercial firm of Shattuck and Hoffman, by personal service on Frank B. Hoffman, a member of said firm; personally on Albert R. Shattuck individually and as a member of the firm of Shattuck & Hoffman, personally on Frank B. Hoffman individually and as a member of the firm of Shattuck and Hoffman, personally on William B. Shattuck, and on the British and American Mortgage Company (Limited) by personal service on Wm. B. Shattuck, a director, who accepted service as ordered by plaintiff's attorneys.

Returned same day.

(Signed) WM. EGAN,
Deputy Sheriff.

Citation.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

53 Mrs. MARY CORINNE WARREN FLEITAS
vs.
WILLIAM F. MELLEN and Others. } No. 22918.

Mr. William F. Mellen, New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the civil dis-

trict court for the parish of Orleans, within ten days after service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, A. Voorhies, judges of the said court, this 11th day of January, in the year of our Lord 1888.

(Signed) JAS. D. RANKIN,
Deputy Clerk.

Sheriff's Return on Citation. Filed January 16th, 1888.

Received January 12th, 1888, and on the 14th day of January, 1888, I served a copy of the within citation and accompanying petition personally on Wm. F. Mellen, defendant herein.

Returned same day.

(Signed) A. E. AUBURTIN, *D'y Sh'ff.*

Citation.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

54 Mrs. MARY CORINNE WARREN FLEITAS *vs.* WM. F. MELLEN and Others. } No. 22918.

Mr. Gilbert M. Richardson, New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the civil district court for the parish of Orleans, with- ten — after service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, A. Voorhies, judges of the said court, this 11th day of January, in the year of our Lord 1888.

(Signed) JAS. D. RANKIN,
Deputy Clerk.

Sheriff'- Return on Citation. Filed January 16th, 1888.

Received January 12th, 1888, and on the 14th day of January, 1888, I served a copy of the within citation and accompanying petition on Gilbert M. Richardson by personal service on Wm. F. Mellen, his attorney-in-fact.

Returned same day.

(Signed) A. E. AUBURTIN, *D'y Sh'ff.*

Citation.

STATE OF LOUISIANA:

55 Civil District Court for the Parish of Orleans, in the City of New Orleans.

Mrs. MARY CORINNE WARREN FLEITAS
vs.
WM. F. MELLEN and Others. } No. 22918.

To the British and American Mortgage Company (Limited), through its proper officer, New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the civil district court for the parish of Orleans, within ten days from the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, A. V. Voorhies, judges of our said court, this 11th day of January, in the year of our Lord 1888.

(Signed) JAS. D. RANKIN,
Deputy Clerk.

Sheriff's Return on Citation. Filed January 18th, 1888.

Received January 12th, 1888, and on the 16th day of January, 1888, I served a copy of accompanying citation and petition on the British and American Mortgage Company (Limited) by personal service on Wm. F. Mellen, of the firm of W. F. &. D. C. Mellen, its attorneys-in-fact. Returned same day.

(Signed) P. A. McINTYRE, *D'y Sh'ff.*

56 *Citation.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

Mrs. MARY CORINNE WARREN FLEITAS
vs.
WM. F. MELLEN and Others. } No. 22918.

Messrs. Shattuck & Hoffman, New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the civil district court for the parish of Orleans, within ten days from the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Mon-

roe, N. H. Rightor, A. Voorhies, judges of our said court, this 11th day of January, in the year of our Lord 1888.

(Signed) JAS. D. RANKIN,
Deputy Clerk.

Sheriff's Return on Citation. Filed January 18th, 1888.

Received January 12th, 1888, and on the 16th day of January, 1888, I served a copy of within citation and accompanying petition on Shattuck & Hoffman, defendants herein, by personal service on Frank B. Hoffman, a member of the firm.

Returned same day.

(Signed) P. A. McINTYRE, *D'y Sh'ff.*

57 *Citation.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

Mrs. MARY CORINNE WARREN FLEITAS
vs.
WM. F. MELLEN and Others. } No. 22918.

Mr. Frank B. Hoffman, individually and as a member of the firm of Shattuck & Hoffman, New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy — this citation, or deliver your answer to the same, in the office of the clerk of the civil district court for the parish of Orleans, within ten days from service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Rightor, A. Voorhies, judges of our said court, this 11th day of January, in the year of our Lord 1888.

(Signed) JAS. D. RANKIN,
Deputy Clerk.

Sheriff's Return on Citation. Filed January 18th, 1885.

Received January 12th, 1888, and on the 16th day of January, 1888, I served a copy of the within citation and accompanying petition personally on Frank B. Hoffman, individually and as a member of the firm of Shattuck & Hoffman.

Returned same day.

(Signed) P. A. McINTYRE, *D'y Sh'ff.*

58 *Citation.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

Mrs. MARY CORINNE WARREN FLEITAS
vs.
WM. F. MELLEN and Others. } No. 22918.

Mr. Albert R. Shattuck, individually and as a member of the firm of Shattuck & Hoffman, New Orleans:

You are hereby summoned to comply with the demand contained in the petition, a copy of which accompanies this citation, or deliver your answer to the same, in the office of the clerk of the civil district court for the parish of Orleans, within ten days from service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, Frank A. Monroe, N. H. Rightor, A. Voorhies, judges of the said court, this 11th day of January, in the year of our Lord 1888.

(Signed) JAS. D. RANKIN,
Deputy Clerk.

Sheriff's Return on Citation. Filed January 18th, 1888.

Received January 16th, 1888. I served a copy of within citation and accompanying petition on Albert R. Shattuck, individually and as a member of the firm of Shattuck & Hoffman, by
59 personal service on W. F. Mellen, of the firm of W. F. & D. C. Mellen, his attorneys.

Returned same day.

(Signed) P. A. McINTYRE, *Dep. Sh'ff.*

Citation.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

Mrs. MARY CORINNE WARREN FLEITAS
vs.
WM. F. MELLEN and Others. } No. 22918.

W. B. Shattuck, New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the civil district court for the parish of Orleans, within ten days from the service hereof.

Witness the Honorables A. L. Tissot, W. T. Houston, F. A Mon-

roe, N. H. Rightor, A. Voorhies, judges of the said court, this 11th day of January, in the year of our Lord 1888.

(Signed) JAS. D. RANKIN, *Dep. Sh'ff.*

Sheriff's Return on Citation. Filed January 18th, 1888.

60 Received January 12th, 1888, and on the 16th day of January, 1888, I served a copy of the within petition and accompanying citation on W. B. Shattuck, defendant herein, by serving same on W. F. Mellen, of the firm of W. F. & D. C. Mellen, their attorney-.

(Signed) P. A. McINTYRE, *Dep. Sh'ff.*

Petition for Removal. Filed Jan'y 24th, 1888.

Civil District Court, Division "E."

Mrs. MARY CORINNE WARREN FLEITAS *vs.* W. F. MELLEN *et als.* } No. 22918.

To the hon. the civil district court of the parish of Orleans, State of Louisiana:

The petition of Gilbert M. Richardson, Wm. B. Shattuck, the British and American Mortgage Company (Limited), Albert R. Shattuck and F. B. Hoffman, individually and as partners composing the firm of Shattuck & Hoffman, and Wm. F. Mellen, being all the defendants to plaintiff's petition, unto your hon. court respectfully represents—

1st. That at the date *of* this suit was filed and ever since then and now said Gilbert M. Richardson was, has been, and is a citizen of the State of New York; said W. B. Shattuck was, has been, and is a citizen of the State of New York; said British & American Mortgage Company (Limited) was, has been, and is an alien, a subject of the Kingdom of Great Britain, having its domicil in

61 London, England; said Albert R. Shattuck and F. B. Hoffman were, have been, and are citizens of the State of Massachusetts, and that none of them now reside or have a long time heretofore resided in this State of Louisiana, and that the plaintiff, Mrs. Fleitas, and her husband were, have been, and are citizens of the State of Louisiana, residing in the parish of St. Bernard.

2d. That as to said Mrs. Fleitas and said Wm. B. Shattuck, said Gilbert M. Richardson and said Albert R. Shattuck and said F. B. Hoffman, the controversy is wholly between citizens of different States and can be fully determined as between them.

3d. That as to the said British & American Mortgage Company (Limited) the suit is against one alien and the controversy is between the plaintiff, a citizen of the State of Louisiana, on the one side, and a foreign citizen or subject, on the other.

4th. That there is no controversy between the alien defendant, said mortgage company, and the other defendants, citizens of other States, as above named, but the controversy is between plaintiff, on

one side, and the defendants, on the other, and can be wholly and fully determined in one cause; that defendant Wm. F. Mellen is only a nominal defendant and has not and never has had any interest in the matters and things of this suit; that he is sued only as agent and his principals appear in this petition.

5th. That said suit involves an important question and issue arising under the Constitution and laws of the United States, to wit, the interpretation of the bankrupt laws of the United States and the effect of a discharge of plaintiff's husband in bankruptcy in the pretended claim and legal mortgage of plaintiff and the ac-
62 tion of the clerk of court, *ex officio* recorder of St. Bernard parish, Louisiana, in erasing said pretended legal mortgage from the records.

6th. The amount in controversy, exclusive of interest and costs, exceed- the sum of twenty thousand dollars.

Petitioners tender herewith a bond for $1,000.00, with good and sufficient surety and conditioned and payable according to law.

The premises considered, petitioners pray that this cause be removed to the United States circuit court, fifth judicial circuit and eastern district of Louisiana, according to law.

(Signed) WM. F. MELLEN.
G. M. RICHARDSON,
By W. F. MELLEN, *Agent and Att'y.*
BRITISH AND AMERICAN MORTGAGE CO. (LIMITED),
By W. F. MELLEN, *Ag't & Att'y.*
W. B. SHATTUCK,
By W. F. MELLEN, *Ag't & Att'y.*
ALBERT R. SHATTUCK AND SHATTUCK & HOFFMAN.
F. B. HOFFMAN.
(Signed) THOS. J. SEMMES,
W. F. & D. C. MELLEN,
Att'ys for Petitioners.

STATE OF LOUISIANA, }
Parish of Orleans. }

Before me, Benjamin Ory, a notary public in and for the parish of Orleans, State of Louisiana, personally came Albert R. Shattuck, F. B. Hoffman, and William F. Mellen, who, being duly sworn, says that the allegations of the foregoing petition are true in substance and in fact.

(Signed) ALBERT R. SHATTUCK.
F. B. HOFFMAN.
W. F. MELLEN.

Sworn to and subscribed to before me this 24th day of
63 January, 1888.
[L. S.] (Signed) BENJAMIN ORY, *Not. Pub.*

Bond for Removal. Filed January 24th, 1888.

Mrs. CORINNE WARREN FLEITAS
vs.
WM. F. MELLEN and Others. } No. 22918.

Know all men by these presents that we, William F. Mellen, Wm. B. Shattuck, The British & American Mortgage Company (Limited), Albert R. Shattuck & Frank B. Hoffman, individually and as partners under the firm name of Shattuck & Hoffman, as principals, and W. A. Cunningham, of the city of New Orleans, as surety, are held and firmly bound to Mrs. Corinne Warren Fleitas, wife of F. B. Fleitas, in the sum of one thousand dollars, lawful money of the United States; to the payment of which, well and truly to be made to the said Mrs. Fleitas and to her heirs, executors, administrators, or assigns, we bind ourselves and our heirs, executors, and administrators *in solido* by these presents.

Signed, sealed, and delivered this 24th day of January, A. D. 1888.

The condition of this obligation is such that whereas the said Mrs. Corinne Warren Fleitas has instituted a suit against said principal obligors, Wm. F. Mellen, Gilbert M. Richardson,
64 Wm. B. Shattuck, The British & American Mortgage Company (Limited), Albert R. Shattuck & F. B. Hoffman, individually and as partners, and which said suit is now pending in the civil district court for the parish of Orleans, State of Louisiana, and the amount in controversy therein, exclusive of interest and costs, exceed- the sum of twenty thousand dollars; and whereas the above-named defendants have before the day on which under the law they are required to plead or answer the petition of the said Mrs. Fleitas, plaintiff in said cause, and which cause is numbered 22918 on the docket of said civil district court, filed and presented their petition in and to said civil district court, praying for a removal of said cause from said civil district court into the circuit court of the United States, fifth judicial circuit and eastern district of Louisiana:

Now, if the above-bounden Wm. F. Mellen, Gilbert M. Richardson, British & American Mortgage Company (Limited), Wm. B. Shattuck, Albert R. Shattuck and F. B. Hoffman (individually and partners) shall enter into the circuit court of the United States, fifth circuit and eastern district of Louisiana, on or before the first day of its next session, a copy of the record in the aforesaid suit of Mrs. Fleitas against the above-named defendants and shall pay all costs that may be awarded by said circuit court if said court shall hold that said suit was wrongfully or improperly removed thereto, and shall enter and appear in said court and give bail if bail were orig-

inally required, then this obligation to be null and void; otherwise to be of full force and effect.

65 (Signed) W. F. MELLEN. [SEAL.]
GILBERT M. RICHARDSON, [SEAL.]
By W. F. MELLEN, *Ag't & Att'y.* [SEAL.]
THE BRITISH & AMERICAN MORTGAGE CO. (LIMITED). [SEAL.]
WM. B. SHATTUCK, [SEAL.]
By W. F. MELLEN, *Ag't & Att'y.* [SEAL.]
ALBERT R. SHATUCK. [SEAL.]
SHATTUCK & HOFFMAN. [SEAL.]
F. B. HOFFMAN. [SEAL.]
W. A. CUNNINGHAM. [SEAL.]

STATE OF LOUISIANA, }
Parish of Orleans, }

Before me, Charles T. Soniat, a notary public in and for said parish of Orleans, personally came the above-named W. A. Cunningham, and, being by me first duly sworn, says that he is worth the sum of more than one thousand dollars in valuable property in the State of Louisiana over all his debts, liabilities, and exemptions.

(Signed) W. A. CUNNINGHAM.

Sworn to and subscribed before me this 24th day of January, 1888.

[L. S.] (Signed) CHAS. T. SONIAT, *Not. Pub.*

Order for Removal.

Let this cause be removed to the United States circuit court, fifth judicial circuit, eastern district of Louisiana, as prayed
66 and according to law, upon defendants giving bond for the sum of $1,000.00, with good and sufficient surety, as the law requires.

New Orleans, January 24th, 1888.

(Signed) ALBERT VOORHIES, *Judge.*

Answer of G. M. Richardson. Filed April 18th, 1888.

In the Circuit Court of the United States, Eastern District of Louisiana.

Mrs. CORINNE WARREN FLEITAS
vs.
WM. F. MELLEN *et als.*
} No. 11702. In Equity.

The separate answer of Gilbert M. Richardson, a respondent, to the bill of complaint of the complainant.

Saving and reserving all manner of exceptions to the many defects and insufficiencies of said bill of complaint, answering, this respondent says:

He knows nothing of his own knowledge of said alleged marriage contract, but is willing to admit that the said contract was executed before the notary named February 6th, 1868; but upon information and belief he denies that the parents of the complainant, on that day or on any other day, about that time, made a dona-
67 tion of twenty thousand dollars ($20,000.00) to complainant in lawful money of the United States; denies that such sum was placed in the hands of the complainant and by her delivered into the hands of her husband or by the said alleged donors delivered into the hands of her husband.

Admits that the said Mrs. Fleitas and her husband have for some years past lived in St. Bernard parish, and that the said marriage contract was recorded therein, in Mortgage Book 6, fol. 132 and 135, September 27th, 1870; but this respondent does not know that it was recorded at any time in any conveyance book or book of donations, and this respondent to be effected thereby demands strict proof thereof; denies that at all times since said date said marriage contract has been of record in the proper records for contracts of that character in said parish; on the contrary, this respondent avers that said contract was long since lawfully and by proper authority cancelled and erased from the records of the said parish, as will be hereinafter more fully shown.

This respondent denies that complainant has at all times since the alleged inscription of said marriage contract had a legal mortgage on all of the property of her husband in said parish of St. Bernard for the security of said pretended claim of twenty thousand dollars ($20,000.00), and avers on information and belief that if said sum of money ever was placed by complainant in the hands of her husband at any time it was long since paid and returned to her or released, discharged, and extinguished, as will be hereinafter shown.

Admits the acquisition by the said Francis B. Fleitas of the
68 Myrtle Grove plantation from L. E. Lemarie, by act passed January 7th, 1882, and of the Corinne plantation from his mother by act passed April 28th, 1877, as stated in the complainant's bill of complaint, but emphatically denies that by operation of law or otherwise the said complainant acquired or had a legal mortgage on all of said plantations or any part thereof for the security of the said sum of twenty thousand dollars ($20,000.00) mentioned in said marriage contract; all of which will be hereinafter more fully shown.

Admits the subsequent mortgage by F. B. Fleitas in favor of his mother on the Corinne plantation and the waiver by complainant of said pretended legal mortgage in favor of the said mother, but denies that by its terms said waiver was expressly limited to said mortgage; admits the foreclosure of the said mortgage and the purchase by said Mrs. M. D. C. Fleitas of said Corinne plantation at the judicial sale thereof, and that said F. B. Fleitas was thereby divested of his title thereto; admits that prior to 1884 said F. B. Fleitas again purchased all of the said plantation from his mother, and by act of sale she conveyed the Corinne plantation to him, and that said acts were duly recorded, and that thereby said F. B. Fleitas

again became the owner of the said plantation; but denies that the said plantation became thereby subject to said pretended legal mortgage of complainant, and that she thereby again obtained a first and ranking mortgage and privilege on said property; denies that the Myrtle Grove plantation at any time became subject to said pretended legal mortgage.

69 Respondent admits the judicial demand of complainant upon her said husband for her said pretended claim of twenty thousand dollars ($20,000.00); admits the suit, the recovery of judgment of separation of property and for dissolution of the community—the judgment for the said sum of twenty thousand dollars ($20,000.00), with recognition of said pretended legal mortgage from September 27th, 1870—as stated in said petition or bill of complaint; but this respondent avers that as to this respondent said suit and said judgment were null and void in this, that the said pretended claim of twenty thousand dollars ($20,000.00) had no existence in law or in fact, as will be hereinafter more fully shown, and that said pretended mortgage, if it ever had any existence legally, which this respondent denies, had been long before the institution of said suit lawfully satisfied, discharged, extinguished, erased, and cancelled; admits the seizure of the said lands under the said writ of *fieri facias*, the sale and the purchase by complainant, and the purchase thereof by complainant at said sum of twenty thousand dollars ($20,000.00); but avers that as to this respondent said seizure and sale and said sheriff's deed were and are null and void; avers that said suit, said judgment, and said seizure and said sale and said purchase were brought about by a combination and collusion between said F. B. Fleitas and said complainant for the purpose and with the design of cutting out and extinguishing the mortgage held by this respondent, and the foreclosure of which has been enjoined in this suit; that though the forms of law in said proceedings may have been substantially complied with, but which

70 respondent denies, the law and the process of the courts have been abused in said suit, judgment, and seizure and sale in that no notice thereof was given to this respondent, and that the mortgage herein by respondent was a first lien and encumbrance on all of said plantation and was not paid off or assumed by said Mrs. Fleitas, and everything was conducted in a quiet and clandestine manner, so as to purposely keep all of said proceedings from the knowledge of this respondent, in the interior of a sparsely populated country parish, remote from commerce, and by publication in a parish newspaper of extremely limited circulation, and said property was adjudicated to the complainant at a sum not exceeding but less than one-half its value; that owing to the studied secresy of all said proceedings, although said sales took place in a season of fine crops and when such property was in demand, no one was present at said sale to bid on the said property, and said plantations were adjudicated in bulk to the complainant at a merely nominal sum, to the great wrong, injury, and damage of this respondent; that this respondent had no knowledge of said proceedings or of the complainant's claim until the institution of this suit.

Denies each and every allegation of the said complainant as to combinations between this respondent and Shattuck & Hoffman, the British & American Mortgage Company (Limited), and Wm. F. Mellen or any of them; denies that there is or has been any plan or device between this respondent and Shattuck & Hoffman, W. B. Shattuck, and W. F. Mellen or any of them or with any third person to transfer notes, to cut off equities, deprive obligors of their rights and defenses; denies that they have any joint interest in the control of the said mortgage of said F. B. Fleitas in favor
71 of this respondent; and he avers that he has reason to believe and does believe and so charges the truth to be that the said British & American Mortgage Company (Limited) is now and for years has been represented in this State by W. B. Shattuck, who has been and is the managing director of said corporation, duly authorized to accept service of process and to have process of court served on him, and that for years past as such managing director he has had a well-known office and place of business in the city of New Orleans, and that the said Wm. F. Mellen has been for some years past the attorney of said corporation of said Shattuck & Hoffman and this respondent, and that for some purpose he is, in the absence of the said W. B. Shattuck from the city, the attorney-in-fact for the said mortgage company; that said Shattuck & Hoffman have been and still are cotton factors and commission merchants and loan brokers, and as loan brokers acting for said F. B. Fleitas they negotiated the loan from this respondent represented and secured by his mortgage, and that in the mortgage of said F. B. Fleitas to this respondent they, said Shattuck & Hoffman, have never had any other interest than is shown on the face of the said mortgage, and that such interest has at all times, by the express language of said act of mortgage, been subordinate to the interest of this respondent as represented by the several promissory notes described therein; that this respondent is still the lawful holder and owner for value of two promissory notes for ($12,600.00) twelve thousand six hundred dollars each, due and to become due January 1st (fixed), 1888 and 1889, and the unpaid coupons thereto attached, and all described in said act of mortgage, copies of
72 which as Exhibits 1 & 2 are hereto annexed as part hereof, all the others having been paid; that said Mellen has no interest in this suit; that all of these facts could have been ascertained at any time by the complainant or her husband or her attorney by inquiry made of any of the respondents; that such information was never sought by the complainant or her husband or by her attorneys.

This respondent admits *that* this respondent's claims and asserts that the complainant has not a full and complete title to the said Myrtle Grove plantation and the said Corinne plantation and the property immovable by destination thereon, notwithstanding said alleged pretended legal mortgage, said judgment, said suit, sale, purchase, and sheriff's deed, and further claims and asserts that the mortgage held and owned by this respondent and the foreclosure of which has been enjoined in this suit by complainant, a copy of which is filed with complainant's bill of complaint, a certified copy

of which is hereto annexed as Exhibit 3, made part hereof, still bears upon and affects with its prior lien and mortgage said plantations for the following reasons, viz:

1st. Said pretended ($20,000.00) twenty thousand dollars, as this respondent is informed and upon information so charges, was never given to the complainant by her said parents and was never delivered by complainant to her said husband.

2nd. That if it had been so received by complainant and delivered to her said husband, as alleged in said pretended marriage contract and said bill of complaint, the debt of the said husband resulting therefrom was a debt provable under the bankrupt laws of the United States and was not a fiduciary debt; that in and by
73 the judgment of the United States district court in and for the eastern district of Louisiana, and after due proceedings had, said F. B. Fleitas was adjudged a bankrupt, and in — by the further judgment of said court, which was final and was never appealed from, reversed, or avoided, said F. B. Fleitas was, on the 25th day of April, 1877, discharged from all indebtedness provable and not of a fiduciary character, and thereby the said pretended debt to the complainant was fully discharged and extinguished; that on said 25th day of April, 1877, and for several days thereafter the said Fleitas did not own or have title to either one of said plantations or any other property in said parish of St. Bernard; that the record of said marriage contract was then inoperative and of no effect; that it did not and could not affect any property which might have been sold by the assignee in bankruptcy of said F. B. Fleitas or which might, pending said proceedings in bankruptcy, have been sold by the said defendant in payment or satisfaction or on account of said alleged indebtedness, and thereby said record of said pretended mortgage, even if it has been just, valid, and correct, became by operation of law cancelled and erased when, by said Fleitas' discharge in bankruptcy, his said alleged indebtedness to his said wife was extinguished and discharged as aforesaid by the judgment and the decree of the said district court of the United States of April 25th, 1877; avers that the erasure of the said pretended mortgage by the entry on the record thereof of April 25th, 1877, was legal and valid, but by clerical error it was written "by judgment of the United States circuit court" instead of the United States dis-
74 trict court; that the said judgment referred to was the judgment of the said district court in bankruptcy of that date finally discharging said F. B. Fleitas from said alleged indebtedness to complainant, if it ever existed, and all other debts of said F. B. Fleitas, as hereinbefore set forth, and as such was full authority to said clerk to erase said alleged lien and mortgage.

Admits that this respondent does claim and assert that said alleged indebtedness was not a fiduciary debt; that it was provable in bankruptcy under said law of Congress, and was by said judgment of discharge rendered in the said district court completely extinguished and discharged and the record thereof rendered inoperative, null, and void; denies that she was not competent to prove her debt or claims by reason of any want of authority from her said hus-

band, and avers that it does not appear from any allegations that she ever applied to her husband for such authority, or that on his refusal to grant it she applied to the court for such authority or for authority to institute any other legal proceedings against him at any time, although her said husband has recently and with apparent readiness authorized the institution of suit against him for a dissolution of the community, the separation of property, and for judgment of twenty thousand dollars ($20,000.00), and has also granted her permission to institute this suit against this respondent, by which it is wrongfully and unjustly sought to deprive this respondent of his only security for the large amount due him for a *bona fide* loan of money, the benefits of which, equally with her said husband, the complainant has fully enjoyed.

75 Admits that the husband of the complainant in said suit instituted against him for said sum of twenty thousand dollars ($20,000.00) did not set up or plead said discharge in bankruptcy in bar of her said claim, for that would have defeated the combination hereinbefore set forth to wrong and damage this respondent by setting up and sustaining said pretended legal mortgage, to cut out and destroy the *bona fide* mortgage of this respondent; but this respondent now sets up and pleads said discharge in bankruptcy as a free and full and final discharge of said Fleitas from said pretended indebtedness to complainant and as a complete destruction and extinction of any and all legal mortgage (if any there had been) resulting from the inscription of said marriage contract.

Denies that at the date the complainant caused the said property to be seized and sold for the satisfaction of her pretended claim against her said husband the complainant had any claim or mortgage affecting the said property superior in rank to the mortgage of this respondent.

3rd. That there was also the erasure and cancellation of the said pretended legal mortgage, as shown by copy of said marriage contract of March 18th, 1874, the marginal entries thereon, hereto annexed as Exhibit 4, made part hereof, under the entry, "Erased, annulled, and cancelled by virtue of an order of the sheriff of the parish of St. Bernard, dated this eighteenth of March, 1874, requesting and authorizing me to deface the mortgage herein granted by F. B. Fleitas to his wife, Mary Corinne Warren, to secure her matrimonial, dotal, and paraphernal rights, and said order hereto annexed for reference," signed "Philip Toca," on the margin

76 of the record of said marriage contract. Said cancellation was proper and legal and valid; that said Toca was the clerk of the district court of said parish and *ex officio* recorder thereof; that the said Mrs. Widow Fleitas, mother of complainant's husband, had become the owner of a mortgage executed by the said F. B. Fleitas to Alfred Bertus by act passed before Amedee Ducatel June 29th, 1871, in which act of mortgage the complainant, under the authorization of her said husband, had intervened and waived her rights and priority of rank alleged by her to result from the said marriage contract and the record thereof; that in said act of mortgage she expressly renounced in favor of the mortgagee her matri-

monial, dotal, and paraphernal rights and all claims, mortgages, and privileges on the property; that on the foreclosure of said mortgage said Widow Fleitas became the purchaser and owner of said lands at public sale thereof by the sheriff under judgment of said district court; that thereby it became and was the duty of said sheriff to cause said record of said pretended legal mortgage to be erased and cancelled, that said Widow Fleitas might acquire and hold said lands free of the cloud hanging thereon and resulting from the record of said pretended legal mortgage; that thereafter the said Widow Fleitas sold said Corinne plantation again to her son, said F. B. Fleitas, but retained thereon a vendor's lien and special mortgage to secure to her the sum of ($25,000.00) twenty-five thousand dollars, and which, even if said pretended legal mortgage was then in force or operative (but which is denied by this respondent), was prior in rank by reason of said waiver of the complainant, as before set forth, to said pretended mortgage of complainant,
77 but which said Widow Fleitas waived in favor of this respondent.

4th. And for further defense this respondent says—

That the sale under *fi. fa.* issued out of the said district court of said St. Bernard parish did not cut out or extinguish the mortgage of this respondent; that it still exists in full force on said plantations; that one of the notes now held by this respondent is part due, and respondent is, by the injunction of the court in this suit, restrained from proceeding to foreclose his valid and subsisting mortgage.

And now respondent again denies that at any time there has been or now is any combination or conspiracy between him and his co-respondents or any of them for any purpose whatsoever; that no effort has been agreed on or made to deprive the complainant or her husband of any equity in or to the said lands or of any equity arisen in her favor on which she or her husband could set up any defense against the notes and mortgage held by this respondent, and there has been no combination between this respondent and any other person for the purpose of transferring or concealing the ownership of the notes given by said Fleitas to this respondent and secured by said act of mortgage.

And now, having fully answered, this respondent prays that the said injunction be dissolved and the said bill of complaint dismissed at the costs of the complainant; and, as in duty bound, etc., etc.

(Signed) GILBERT M. RICHARDSON,
By W. F. & D. C. MELLEN &
T. J. SEMMES, *Solicitors.*

78 STATE OF LOUISIANA, }
Parish of Orleans. }

Before me, Benjamin Ory, a notary public in and for the said parish of Orleans, personally came and appeared Wm. F. Mellen, who, being first duly sworn, states that he is the attorney of the respondent, who is absent from this State, and that the matters and

things of the foregoing answer are true to the best of his knowledge, remembrance, information, and belief.

(Signed) WM. F. MELLEN.

Sworn to and subscribed before me this 16th day of April, 1888.

(Signed) BENJAMIN ORY,

[L. S.] *Notary Public.*

Note and Coupon, Marked Exhibit No. 1. Filed with Answer April 18th, 1888.

$12,600.00. ST. BERNARD PA., LA., *January 28th*, 1884.

On the first day of January, A. D. 1888 (fixed), I promise to pay to the order of Gilbert M. Richardson twelve thousand six hundred dollars at the Louisiana National Bank of New Orleans, Louisiana, for value received, with interest, at the rate of eight per cent. per annum, after maturity. The payment of this note and interest is secured by a mortgage, which is recorded in the public records of St. Bernard parish, in the State of Louisiana.

Due Jan'y 1, '88.

(Signed) F. B. FLEITAS.

79 ST. BERNARD PA., LA., *Jan'y 28th*, 1884. $1,008.00.

On Jan'y first, 1888, without grace, I promise to pay to Gilbert M. Richardson or order, at the Louisiana National Bank of New Orleans, Louisiana, one thousand and eight dollars, value received, being an instalment of interest due on that day upon my mortgage note for $12,600 of even date herewith.

(Signed) F. B. FLEITAS.

Written across face of coupon and note:

Ne varietur. Secured by mortgage and crop lien executed before me this day.

New Orleans, Jan'y 28, 1884.

(Signed) BENJAMIN ORY, *Not. Pub.*

Mortgage Note and Two Coupons, Marked Exhibit No. 2. Filed with Answer April 18th, 1888.

$12,600.00. ST. BERNARD PARISH, LA., *January 28th*, 1884.

On the first day of January, A. D. 1889 (fixed), I promise to pay to the order of Gilbert M. Richardson twelve thousand six hundred dollars at the Louisiana National Bank of New Orleans, Louisiana, for value received, with interest, at the rate of eight per cent. per annum, after maturity. The payment of this note and interest is secured by a mortgage which is recorded in the public rec-

80 ords of St. Bernard parish, in the State of Louisiana.

Due Jan'y 1, '89 (fixed).

(Signed) F. B. FLEITAS.

Written across face:

Ne varietur. Secured by mortgage and crop lien executed before me this day.
New Orleans, January 28th, 1884.
(Signed) BENJAMIN ORY, *Not. Pub.*

ST. BERNARD PAR., LA., *Jan'y 28th*, 1884. $1,008.

On January first, 1889, without grace, I promise to pay to Gilbert M. Richardson or order, at the Louisiana National Bank of New Orleans, Louisiana, one thousand and eight dollars, value received, being an instalment of interest due on that day upon my mortgage note for $12,600 of even date herewith.
(Signed) F. B. FLEITAS.

Written across face:

Ne varietur. Secured by mortgage and crop lien executed before me this day.
New Orleans, Jan'y 28, 1884.
(Signed) BENJAMIN ORY,
Notary Public.

ST. BERNARD PAR., LA., *Jan'y 28th*, 1884. $1,008.00.

On January first, 1888, without grace, I promise to pay to
81 Gilbert M. Richardson or order, at the Louisiana National Bank of New Orleans, Louisiana, one thousand and eight dollars, value received, being an instalment of interest due on that day upon my mortgage note for $12,600 of even date herewith.
(Signed) F. B. FLEITAS.

Written across face:

Na varietur. Secured by mortgage and crop lien executed before me this day.
New Orleans, Jan'y 28, 1884.
(Signed) BENJAMIN ORY, *Not. Pub.*

Mortgage, Marked Exhibit No. 3. Filed with Answer April 18th, 1888.

STATE OF LOUISIANA, }
Parish of Orleans. }

Be it known that on this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and eighty-four, before me, Benjamin Ory, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared Francis Barthelemy Fleitas, of Saint Bernard parish, Louisiana, who, in the presence of me, said notary, and the subscribing witnesses hereinafter named, declared that he is justly indebted unto Gilbert M. Richardson, of the city of New York, in the sum of sixty-three thousand ($63,000) dollars for
82 money lent, as evidenced by the five promissory notes of said Francis Barthelemy Fleitas, of even date herewith, to the

order of Gilbert M. Richardson, and payable at the Louisiana National Bank of New Orleans, Louisiana, with interest from maturity at the rate of eight per cent. per annum, as follows:

Five principal notes each of the sum of twelve thousand six hundred dollars ($12,600), due January first (fixed), A. D. 1885, 1886, 1887, 1888, and 1889, and having attached, respectively, one, two, three, four, and five interest coupons; which said notes and coupons, after having been paraphed by me, the said notary, to identify them herewith, have been delivered to the said Gilbert M. Richardson, herein represented by William F. Mellen, of the parish of Orleans, State of Louisiana, who hereby acknowledges the receipt thereof;

And that whereas the said appearer has obligated and does by these presents, in consideration of the mutual covenants, agreements, and benefits provided and contained in certain articles of agreement executed the 28th day of January, A. D. 1884, by and between said appearer and Messrs. Shattuck & Hoffman, cotton factors and commission merchants of New Orleans, La., a commercial firm composed of Albert R. Shattuck and Frank B. Hoffman, and to which agreement reference is now particularly made, obligate himself, the said appearer, and his heirs, executors, administrators, and assigns, to gather and put in condition to ship to market as rapidly as possible the crop of sugar and molasses that said appearer or his heirs, executors, administrators, and assigns may raise upon or control from the property hereinafter described
83 during the years 1884, 1885, 1886, 1887, and 1888 and during any following years or years, so long as any portion of the debt secured or intended to be secured by this act shall remain unpaid, and to ship said sugar and molasses, from time to time as the same may be ready for market, to said Shattuck & Hoffman, in New Orleans, to be by them sold on arrival at their option; and that whereas, under said articles of agreement, said appearer expects to and may become indebted to said Shattuck & Hoffman, during said year or years, on open account or otherwise or for money paid out and advanced to and for said appearer in and about the making, handling, conveyance, carriage, storage, insurance, and sales of said crops of sugar and molasses or otherwise, but which indebtedness to said Shattuck & Hoffman shall in no event exceed in the aggregate an amount equal to the said indebtedness to said Gilbert M. Richardson;

And that whereas it is understood and agreed that said appearer will promptly pay all taxes, assessments, and charges that are or would be a lien upon said property, as the same may be due and payable, and will keep the buildings and machinery situated thereon insured for the full term of this mortgage in some responsible company or companies satisfactory to the mortgage-s herein in the sum of twenty-five thousand dollars, and will assign and deliver said policies of insurance to said Shattuck & Hoffman for the use and benefit of all and any persons interested in the debts secured herein, and that if said appearer shall fail to pay any of the taxes, assessments, or other legal charges upon said property when they
84 become due or shall permit the same to be sold therefor or

forfeited for want of bidders or shall fail to obtain or keep alive said insurance, then said Gilbert M. Richardson and said Shattuck & Hoffman or either of them or any of their successors or assigns or any person or persons interested in any of the debts hereby secured shall be entitled to pay the same, but this clause shall not be construed as obligatory on the holder or holders of said promissory note or said Shattuck & Hoffman or other parties in interest or as rendering them or any of them liable for any loss, damage, or injury which may result from the non-insurance of said buildings, and in case of sale for taxes to redeem said property, and that all moneys so paid and all expenses incurred therein and thereby and all payments made at the option of said Gilbert M. Richardson or by said Shattuck & Hoffman or by any person interested as aforesaid for premiums of insurance as hereinbefore provided and all sums now due or to become due to said Shattuck & Hoffman as hereinbefore set forth shall be a part of the principal debts secured by this instrument and be subject to the same rate and conditions as to interest, but the premiums of insurance and all amounts for taxes and other legal charges upon said property that may be paid by the mortgagees herein named or any of them or any person in interest shall not in any one year exceed in the aggregate two thousand dollars:

Now, in order to secure the full and punctual payment of the said promissory note and such indebtedness as under the provisions hereof may accrue to Shattuck & Hoffman or any person in interest, in capital and interest, at maturity, and attorneys' fees, costs, charges, and expenses, as hereinafter provided, the said appearer
85 moreover declared that he does by these presence specially mortgage and hypothecate in favor of the said Gilbert M. Richardson and his assigns and in favor of said Shattuck & Hoffman and their assigns and of any and all such person or persons as may hereafter be the holder or holders of the said promissory note all and singular the following-described property, including the buildings, fixtures, and all improvements and appurtenances situated thereon, to wit: First, a certain tract of land or plantation known as the "Myrtle grove," situated in the parish of St. Bernard, in State of Louisiana, on the left bank of the River Mississippi, at about two and one-half leagues below the city of New Orleans, measuring about twenty arpents, more or less, front on said river, but on a line measuring at right angles from the intersection of the levee with the lower side measuring nineteen arpents and twelve toises in width, and having on the lower side line, which separates it from the lands of Ducros, a depth of two hundred and thirty-one and one-half arpents, and on the upper side line, which separates it from the property of Gabriel Villeré, a depth of one hundred and ninety-seven and one-third arpents, both side lines diverging four degrees fifty-four minutes and thirty seconds and running to the line of the property of Antoine Michand, which bounds said plantation in the rear, being the property which said F. B. Fleitas acquired from L. E. Lemarie by act passed Jan'y 7th, '82, recorded in Book No. 15, p. 121, 122, and 123, of the records of conveyances of St. Bernard

parish, La.; second, a sugar plantation situated in Saint Ber-
86 nard parish at about seven miles below the city of New Orleans, on the left bank of the River Mississippi, measuring about nineteen arpents front on said river by a depth extending up to Lake Borgne, bounded on the upper line by property belonging to Mess. Eveville G. Villere and Denis Villere and on the lower line by the plantation of A. W. Walker, being the property which said F. B. Fleitas acquired from Mrs. B. Fleitas by act of sale dated April 28th, 1877, and registered in Book of Conveyances No. 13, p. 194, of the records of St. Bernard parish, Louisiana, and known as the "Corinne" plantation; and also all the engines, boilers, kettles, and other machinery and all other property of whatsoever name or description immovable by destination now on or that may be hereafter placed on or attached to said plantations or either of them, the said appearer hereby binding himself and his heirs not to alienate, deteriorate, or encumber the same to the prejudice of this mortgage.

And the said appearer further declared and covenanted with the said mortgagees and each and every one of them that he has good right and lawful authority to sell, alien-, convey, and mortgage the property before described; that it is free and clear from all incumbrances; that he has an indefeasible title to the same in fee simple which he will warrant and defend.

And the said appearer further declares that he does by these presents consent, agree, and stipulate that in the event that the debts or any portion thereof secured or intended to be secured by this act are not punctually paid when due, or on his failure to keep any of the agreements or covenants contained in this act, it
87 shall be lawful for and he hereby authorizes the said mortgagees or either and every one of them or any other holder or holders of said note or any assigns of said Shattuck & Hoffman of said indebtedness to them to cause all and singular the property hereinbefore described and herein mortgaged to be seized and sold under executory process, without appraisement, to the highest bidder, for cash, hereby confessing judgment in favor of said mortgagees and of such person or persons as may be the holder or holders of said promissory note- and all assigns of said Shattuck & Hoffman for the full amount thereof, capital and interest, together with all costs, charges, and expenses whatsoever.

And the said appearer further declared that he does by these presents obligate himself and his heirs to pay and reimburse unto said mortgagees or any such person or persons as may be the holder or holders of said promissory notes all such attorneys' fees, together with all such costs, charges, and expenses, as said mortgagees or any such holder or holders shall or may incur or pay in the event of the non-payment of said promissory notes at maturity or of any legal proceedings being instituted at any time for the protection or preservation of the rights of the said mortgagees or of any future holder of said notes or of any part of said indebtedness to Shattuck & Hoffman; said attorneys' fees, however, to be fixed at 5 per cent. on the amount so in suit and unpaid.

And the said appearer further declared that whereas the said indebtedness is for money advanced by the said mortgagees as a whole or in part to enable said appearer to cultivate the said property during the years 1884, 1885, 1886, 1887, and 1888, and which is
88 required by him for the production of his crops of sugar and molasses during the said years 1884, 1885, 1886, 1887, and 1888, in order still further to secure the payment of said notes and said indebtedness to Shattuck & Hoffman, he does by these presents specially pledge and pawn to said Gilbert M. Richardson and said Shattuck & Hoffman the entire crops of sugar and molasses now growing or which may grow on said property during the years 1884, '5, '6, '7, and '8, and further obligate himself to gather and put in condition to ship to market, as soon as the same can be done, the crops of sugar and molasses that he may raise upon or control from the property herein described during the seasons of 1884–'5, 1885–'6, 1886–'7, 1887–'8, 1888–'9, and during any following season or seasons during which any portion of the debt secured or intended to be secured by this act shall remain unpaid, and also obligate himself to ship the said sugar and molasses, from time to time, as soon as the same is gathered and in condition to be sent to market, to said Shattuck & Hoffman, to be sold by them.

It is further understood and agreed that said appearer will not sell or otherwise convey or dispose of said lands, so long as this mortgage shall remain in force, unless he shall make it a condition precedent to such sale, conveyance, or other disposition that the vendee, donee, or other person to whom such sale, conveyance, or other disposition is intended to be made shall first assume all the obligations, covenants, and agreements of said appearer to and with said Shattuck & Hoffman, as set forth in said articles of agreement hereinbefore referred to, and also such as are contained and set forth in this act; but in no event is this provision to be construed
89 as in any manner waiving, affecting, or impairing the security herein contained in favor of said Gilbert M. Richardson, or any other covenants, obligations, or indebtedness herein provided for and intended to be secured.

And it is expressly agreed and understood by and between the parties hereto that the said Shattuck & Hoffman shall have the exclusive right to apply the net proceeds of the sale of all sugar and molasses shipped and all payments of money made to them in any one season to the payment of any indebtedness which may be now or which may hereafter become due to said Shattuck & Hoffman by said appearer upon open account or otherwise, or to the debt, secured and intended to be secured by this act, which may be due or becoming due in that season, or the payments of any demands of said appearer, according to their view of the exigency of the case; that such application may be made at such time and in such manner as they may elect, and that no application of such proceeds of sale or money to the payment of any debt in open account which may at any time be due to the said Shattuck & Hoffman by the said appearer, or to any other account, shall impair, lessen, or prejudice

the other debts secured and intended to be secured by this act or the security herein and hereby provided therefor.

It is also agreed and understood that should this mortgage be foreclosed and the land or other properties herein described sold to satisfy the said indebtedness herein secured, then out of the proceeds of said sale the said indebtedness to said Gilbert M. Richardson, whether held by said G. M. Richardson or his assigns, shall be paid by priority over said indebtedness due or to become due to said Shattuck & Hoffman or their successors and assigns.

90 According to the annexed certificates of the recorder of mortgages in and for the parish of St. Bernard, in this State, dated the twenty-second day of January, 1884, hereto annexed and made part of this act, it appears that there are no mortgages, liens, or incumbrances standing in the name of and against the said Francis B. Fleitas on the said property and recorded in his office except the following: On the hereinbefore firstly described property, 1st, a mortgage for the sum of $13,000, now reduced to $9,000, granted by said Fleitas in and by his aforecited act of purchase.

On the hereinbefore secondly described property, 1st, the mortgage granted by said Fleitas in favor of Mrs. Widow B. Fleitas to secure $25,000, as per act before N. B. Trist, notary, dated March 6, 1879; 2d, the mortgage granted by him in favor of Lehman, Abraham & Co. to secure $10,884.07, per act before said notary, Trist, dated March 6th, 1883; 3d, the pledge and mortgage granted by him in favor of Lehman, Abraham & Co. to secure $25,000, per act before said notary, Trist, dated March 6th, 1883; 4th, the contract entered into between said F. B. Fleitas and the Babcock and Wilcox Company, by which the former promised to pay the latter the sum of $1,823.55 on the completion of certain work to be made on the Corinne plantation by the said Babcock & Wilcox Company.

And also to these presents came and appeared said Gilbert M. Richardson, herein represented by William F. Mellen, of the parish of Orleans, State of Louisiana, and said Shattuck & Hoffman, herein represented by William F. Mellen, of the parish of Orleans, State of Louisiana, who severally, in the same presence, declared that

91 for and in behalf of their said constituents respectively they accept this mortgage, with all its terms and obligations and agreements, as hereinbefore set forth.

The word cotton, wherever it occurs in the foregoing deed, stricken out and the words "sugar and molasses" inserted in its stead before execution.

Attest:

(Signed) W. A. BRES.

Thus done and passed at my office, at New Orleans, in the parish of Orleans, in the presence of me, said notary, and James Simeon, and William B. Murphy, competent witnesses, who have hereto sub-

scribed their names, together with me, said notary, and said parties, on the day, month, and year first hereinbefore written.

(Original signed)
JAS. SIMEON.
W. B. MURPHY.

F. B. FLEITAS.
WM. F. MELLEN,
For G. M. Richardson.
WM. F. MELLEN,
For Shattuck & Hoffman.
BENJAMIN ORY, *Not. Pub.*

I, the undersigned notary, do hereby certify the above to be a true and correct copy of the original on file and of record in my office.

In faith whereof I have hereunto set my hand and seal,
[L. S.] at New Orleans, La., this 29th day of January, 1884.
(Signed) BENJAMIN ORY, *Not. Pub.*

STATE OF LOUISIANA, }
Parish of St. Bernard. }

CLERK'S OFFICE, *January 29th*, 1884.

I do hereby certify that the above and foregoing instrument of writing was this day duly recorded in my office, in Book of Mortgages No. 12, fo's 80, 81, 82, 83, 84, 85, 86, 87.
(Signed) J. P. DUCROS, *D'y Cl'k.*

92 *Marriage Contract, Marked Exhibit No.* 4. *Filed with Answer April* 18*th*, 1888.

STATE OF LOUISIANA, }
City of New Orleans. }

Be it known that on the sixth day of February, eighteen hundred and sixty-eight, before me, Selim Magner, a notary public, duly commissioned and sworn, for the parish of Orleans and city of New Orleans, personally came and appeared:

1st. Francis Bertholomew Fleitas, of the full age of majority, residing in this city, the legitimate son of the late Barthelemy Fleitas and Mistress Marie Modeste Dorothea Cucullu, of this city, herein stipulating in his own name and behalf, of the first part.

2d. Miss Mary Corinne Warren, of the full age of majority, the legitimate daughter of John Ira Warren and Mistress Mary Margaret Anais Bahan, herein stipulating in her own name and behalf, of the second part.

3d. And the said John Ira Warren and his wife, father and mother of the said Mary Corinne Warren, parties of the third part.

And the said Francis Bartholomew Fleitas, party of the first part, and the said Mary Corinne Warren, party of the second part, mutually declared that in contemplation of the intended marriage, which they bind themselves each to the other to solemnize when-

ever thereto required the one by the other, they have made and do hereby make the following matrimonial agreement:

Article first. All debts contracted previous to said marriage
93 shall be borne and paid by the party with whom they shall have originated, and the other or his or her estate shall not in any manner or under any circumstances be held or made liable therefor.

Article second. There shall be a community of acque-ts and gains between said Francis Bartholomew Fleitas and Mary Corinne Warren, which community shall be governed and regulated by the dispositions of the civil code of this State and any laws of any State to which they may remove notwithstanding.

Article third. The said intended wife declared that she brings into the said intended marriage as her paraphernal property all the furniture, clothing, and jewelry, unto her belonging, being of a value of four thousand dollars, the said intended husband declaring that he has taken cognizance of all the furniture, clothing, and jewelry thus belonging to said Miss Warren, and thus hereby agree- to the valuation thereof, and binds himself to remain charged with and accountable to his said intended wife for said estimated value of said movable effects.

Article fourth. And the said John Ira Warren and said Mistress Mary Margaret Anais Bahan, wife of said Warren, by him herein and hereto duly authorized and assisted, declared that, in consideration of the said intended marriage and the love and affection they bear to their said daughter and only child, they do by these presents make donation, *inter vivos*, gratuitous and irrevocable, and in the most binding manner in which donations can be made, unto the said Miss Mary Corinne Warren, who accepts the same, the sum of twenty thousand dollars, current funds of the United States of America, which sum the said John Ira Warren and his wife
94 have counted and delivered unto the said intended wife in the presence of me, the said notary, and the hereto subscribed witnesses, and the receipt of which sum the said Miss Warren does hereby acknowledge; and thereupon the said Miss Warren did, in the like presence of the undersigned notary and witnesses, hand over and count unto her said future husband the said sum of twenty thousand dollars, which he hereby acknowledges to have received, and he declared that he has taken charge of said amount for account of his said future wife, and for which he holds himself and remains liable to her according to law.

Article fifth. By mutual consent it is hereby agreed that all the property of the future wife now owned by her or which may be hereafter acquired by her with funds unto her belonging shall — and remain her paraphernal property.

Done and passed in New Orleans, at the domicil of the above-named John Ira Warren, No. 225 Jackson street, between St. Charles and Prytania streets, on the day, month, and year before written, in the presence of Messrs. Thomas Appleton and Charles A. Philippi, witnesses of lawful age, domiciliated in this city, who have

signed these presents, together with the parties to this and me, notary, after reading hereof.

(Original signed)

F. B. FLEITAS.
M. C. WARREN.
J. J. WARREN.
M. M. A. WARREN.
THOS. APPLETON.
C. A. PHILIPPI.
S. MAGNER, *Not. Pub.*

95 A true copy.
New Orleans, 19th August, 1870.
(Signed) S. MAGNER, *Not. Pub.*

Duly recorded, at the parish of St. Bernard, this 27th day of September, A. D. 1870.
(Signed) PHILIPPI TOCA, *Recorder.*

STATE OF LOUISIANA, }
Parish of St. Bernard. }

I do hereby certify the above to be a true and correct transcript of the original marriage contract between F. B. Fleitas and Mary Corinne Warren as inscribed in the mortgage office of this parish, in Book Number Six, folios 132, 133, 134, and 135, together, also, with the marginal notes on said Book of Mortgages No. 6, showing the cancellation of said inscription.

Parish of St. Bernard, February 1st, 1888.
(Signed) J. P. DUCROS,
[L. S.] *D'y Cl'k, ex Offiicio Recorder.*

STATE OF LOUISIANA, }
Parish of St. Bernard. }

I hereby certify that the act of which this is a true copy was duly recorded, in the Book of Mortgages No. 6, in this parish on the 27th Sept., 1870.
(Signed) J. P. DUCROS,
Clerk, ex Off. Recorder.

96 Erased, annulled, and cancelled by virtue of an order of the sheriff of the parish of St. Bernard, dated this 18th March, 1874, requesting and authorizing me to deface the mortgage herein granted by F. B. Fleitas to his wife, Mary Corinne Warren, to secure her matrimonial, dotal, and paraphernal rights, &c., said order hereto annexed for reference.

Parish of St. Bernard, March the 18th, A. D. 1874.
(Signed) PHILIPPI TOCA, *Recorder.*

Erased, annulled, and cancelled by virtue of a judgment rendered by the U. S. circuit court, Judge E. C. Billings presiding.
Signed April 25th, 1877.
(Signed) PHILIPPI TOCA, *Recorder.*

Answer of W. F. Mellen. Filed April 18th, 1888.

Circuit Court of the United States, Eastern District of Louisiana.
In Equity.

Mrs. CORINNE WARREN FLEITAS
vs.
W. F. MELLEN *et als.*

97 The separate answer of Wm. F. Mellen, one of the respondents, to the bill of complaint of the complainant.

Answering, he says that he has not now and never has had any formal or pecuniary interest in the matters and things of said bill of complaint, and he denies all charge of conspiracy or fraud in said bill charged against him.

Wherefore he prays that said bill of complaint be dismissed, and that he be discharged without day with all his costs and expenses in this behalf most wrongfully incurred.

(Signed) WM. F. MELLEN.

Sworn to and subscribed before me this 16th day of April, 1889.

(Signed) BENJAMIN ORY,
[L. S.] *Notary Public in New Orleans, La.*

Answer of W. B. Shattuck, British & American Mortgage Co. (Limited), and Shattuck & Hoffman. Filed April 18th, 1888.

Circuit Court of the United States, Eastern District of Louisiana.
In Equity.

Mrs. CORINNE WARREN FLEITAS
vs.
WM. F. MELLEN *et als.*

98 The joint and several answers of the British & American Mortgage Co. (Limited), Wm. B. Shattuck, Albert R. Shattuck, & Francis B. Hoffman, the last two individually and as members of the firm of Shattuck & Hoffman.

Saving and reserving all manner of exceptions, &c., &c., to so much of said bill of complaint of the complainant as they are advised it is necessary or material for them to answer, answering, they say that each and every one of them, respondents, adopts as his own, *mutatis mutandis*, the answer of Gilbert M. Richardson filed herein to said bill of complaint, and they expressly deny that they or any of them have combined and confederated among themselves or with said Gilbert M. Richardson or with said Wm. F. Mellen personally or as agent and attorney against the complainant or her said husband for any purpose whatsoever or to transfer or conceal the notes or mortgage held by said Richardson against said Fleitas or to prevent in any manner the setting up of any equities or any other defenses by the complainant or the complainant's husband or in any other way to

defraud, injure, damage, or oppress the complainant or her said husband.

And now, having fully answered, they pray to be hence dismissed with their reasonable costs in this behalf most wrongfully expended.

(Signed) ALBERT R. SHATTUCK.
F. B. HOFFMAN.
W. B. SHATTUCK.

(Signed) W. F. & D. C. MELLEN AND
T. J. SEMMES,
Sol'rs for Defendants.

STATE OF LOUISIANA, }
Parish of Orleans. }

99 Before me, a notary public in and for said parish of Orleans, personally came and appeared Wm. B. Shattuck, individually and as managing director for the British & American Mortgage Company (Limited), Albert R. Shattuck, and Francis B. Hoffman, individually and as members of the firm of Shattuck & Hoffman, and, being by me duly sworn, severally say that the foregoing answer is true in substance and in fact.

(Signed) F. B. HOFFMAN.
W. B. SHATTUCK.
A. R. SHATTUCK.

Sworn to and subscribed before me this 24th day of March, A. D. 1888, by Francis B. Hoffman and Wm. B. Shattuck.

[L. S. (Signed) BENJAMIN ORY, *Not. Pub.*

Motion to Dissolve Injunction. Entered and Filed April 28th, 1888.

Circuit Court of the United States, Eastern District of Louisiana.
In Equity.

Mrs. CORINNE WARREN FLEITAS }
vs.
W. F. MELLEN *et als.* }

100 On motion of Thos. J. Semmes and W. F. & D. C. Mellen, solicitors for respondent Gilbert M. Richardson, it is ordered by the court that the complainant do show cause on Saturday, May 5th, at 11 o'clock a. m., why an injunction here-fore granted and issued in this cause should not be dissolved, because—

1. There is no equity on the face of complainant's bill of complaint.

2. The bill upon its face shows that the alleged indebtedness in favor of complainant had been settled and discharged and was not in existence at the date of the execution and record of the mortgage in favor of Gilbert M. Richardson.

3. The inscription of said alleged marriage contract had been at

said date lawfully cancelled and erased, as shown by the bill, answers, and exhibits.

4. In any view of the case—upon bill, answers, and exhibits—the mortgage of respondent Richardson is prior and superior in rank to the alleged legal mortgage set up by complainant in her said bill of complaint.

The rule not having been served, I accept service for next Saturday. April 28, 1888.

(Signed) J. R. BECKWITH.

101 *Order: Leave to Amend, Granted Complainant.*

Extract from the Minute Book, April Term, 1888.

NEW ORLEANS, SATURDAY, *April 28th*, 1888.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

Mrs. MARY CORINNE FLEITAS *et al.* *vs.* WM. F. MELLEN *et al.* } No. 11702.

On motion of J. R. Beckwith, solicitor for complainant, it is ordered that the complainant have leave to recast and reform the pleadings in this cause, to accord with proceedings in equity.

Affidavit of Warren and Fleitas. Filed May 12, 1888.

United States Circuit Court, Eastern District of Louisiana.

Mrs. MARY CORINNE WARREN FLEITAS, Wife of Francis B. Fleitas, *vs.* WILLIAM F. MELLEN *et als.* } No. 11702.

102 STATE OF LOUISIANA, *Parish of Orleans,* } *ss:*

John I. Warren and Francis B. Fleitas, being each severally sworn, on oath say, each for himself:

That he, the said Warren, is the father, and he, the said Fleitas, is the husband, of Mrs. Mary Corinne Warren Fleitas, the complainant herein; that they know of and were parties to the marriage contract entered into between Francis B. Fleitas and Miss Mary Corinne Warren, executed before Selim Magner, notary public in and for the parish of Orleans, on the 6th day of February, 1868, set forth in and made a part of the petition filed in the civil district court for the parish of Orleans and transferred to this court; that the statements contained in said contract are true as set forth in said contract, and that particularly is it true that the said sum of twenty thousand ($20,000) dollars mentioned in said contract, as well as the other property in said contract, was actually and in fact,

as stated in said contract, at that time delivered over to the possession of the said Francis B. Fleitas in all respects and particulars as set forth and stated in said contract, and that any statement, allegation, or affirmation that the said sum of $20,000 was not so given to and became the property of the said complainant and by her delivered to the said Francis B. Fleitas is untrue, the facts being in all respects as stated in said marriage contract, except in this particular, that through error of the notary, overlooked at the time, it appears that the donation of said money to their said daughter was the joint donation of the said affiant, John I. Warren, and the said Mrs.
103 Mary Margaret Anaise Behan, wife of the said affiant, Warren, which was an error of statement on the part of the notary, the fact being that the said donation so made to their daughter was made by affiant, John Ira Warren, of and from his own property, and the statement that any portion of it came from affiant Warren's wife as a part of her separate property was an error on the part of the notary in framing the contract, arising probably through misunderstanding, and they say that the said Francis B. Fleitas retained said property in his possession and administered the same until the time of the proceedings for separation of property, the judgment, and the execution of the judgment thereon, as set forth in the petition, and that any statement in any pleading or answer that the said money and property had been returned by said Francis B. Fleitas to his said wife prior to said proceedings for separation of property set forth in the petition is untrue.

(Signed) F. B. FLEITAS.
J. I. WARREN.

Sworn to and subscribed before me this 4th day of May, 1888.
[L. S.] (Signed) N. B. TRIST, *Not. Pub.*

Affidavit of F. B. Fleitas. Filed May 12th, 1888.

United States Circuit Court, Eastern District of Louisiana.

104 Mrs. MARY CORINNE WARREN FLEITAS, Wife of Francis B. Fleitas,
vs.
WILLIAM F. MELLEN *et als.*
No. 11702.

STATE OF LOUISIANA, *Parish of Orleans,* } *ss:*

Francis B. Fleitas, being duly sworn, deposes and says:

That as to and concerning the endorsement written upon the margin of the record of the contract of marriage as recorded in the office of the recorder of the parish of St. Bernard and referred to in the petition herein as filed in the State court and removed here by transcript, the same was never made or entered by his authority or with his knowledge; that the first knowledge he had of the fact that any entry of any sort or kind relating to or referring to any proceeding in any United States court was some time during the summer of 1887, when the attention of affiant was called to it by his father-

in-law; that he has examined the said entry and believes it to be in the handwriting of one Philippe Toca, who was at that time recorder for the parish, but has since departed this life; that said act of the said recorder was not only without warrant and authority, but that this deponent has no knowledge that any action, suit, or proceedings in the United States court for the eastern district of Louisiana or district of Louisiana was ever had that could in any manner affect or relate to said marriage contract, and that he is informed and believes
105 that the record of no such proceeding can be found in the said circuit court; that if said entry was by said recorder based upon a belief that any proceedings, judgment, or decree had been had in the circuit court the said belief on the part of the said recorder was absolutely without foundation in fact; that there were proceedings in bankruptcy in the Federal district court of Louisiana to which this affiant was a party, but that the said proceedings were entirely had in the district court of the United States, a tribunal having different jurisdiction from the circuit court of the United States referred to by said recorder; that affiant has caused search to be made by his counsel for any proceedings against him in the United States circuit court, and has been advised and informed that as the result of such search no suit or proceeding of the character sought to be described or referred to by the said recorder can be found of record in said court.

(Signed) F. B. FLEITAS.

Sworn to and subscribed before me this day.
New Orleans, May 4, 1888.
[L. S.] (Signed) N. B. TRIST, *Not. Pub.*

Affidavit of Thos. Appleton. Filed May 4, 1888.

United States Circuit Court, Eastern District of Louisiana.

106 Mrs. MARY CORINNE WARREN FLEITAS, Wife of Francis B. Fleitas,
vs.
WILLIAM F. MELLEN *et als.*
} No. 11702.

STATE OF LOUISIANA, *Parish of Orleans,* } *ss:*

Thomas Appleton, being duly sworn, deposes and says:

That he is a resident and citizen of Marblehead, in the State of Massachusetts, but at present temporarily residing in the State of Louisiana and has a commercial house in this city; that he was one of the witnesses who subscribed as attesting witness to the contract made in contemplation of marriage between Francis B. Fleitas and Mary Corinne Warren, now the wife of the said Fleitas, executed on the 6th day of February, 1868, before Selim Magner, a notary public; that he was present at the time of the execution thereof, and that he saw the delivery of the money named in said contract, which he was then informed was the sum of $20,000, and

verily believes it was that sum, to Miss Mary Corinne Warren; that the said sum was by her delivered to the said Francis B. Fleitas, as stated in said contract; that he has lately examined the original of said contract in the records of the late Selim Magner, now dead, at the city hall, in the city of New Orleans, and that he remembers the transaction, his being present, and his attesting the said contract as a witness.

(Signed) THOS. APPLETON.

Sworn to and subscribed before me this day.
New Orleans, May 4th, 1888.
[L. S.] (Signed) N. B. TRIST, *Not. Pub.*

107 *Replication. Filed May 26th*, 1888.

Circuit Court of the United States for the Eastern District of Louisiana. In Equity.

Mrs. MARY CORINNE WARREN FLEITAS, Wife of F. B. Fleitas,
vs.
WM. F. MELLEN *et al.*

The replication of the said complainant to each and all of the several answers and pleas of the said defendants now on file in this cause.

This repliant, saving and reserving unto herself all and all manner of advantage and exception to the manifold insufficiencies of said answers, and particularly that the same are not sworn and attested to on oath as required by law and are not sound answers and cannot be considered or dealt with as such, for replication thereto saith that she will aver and prove her said bill to be true, certain, and sufficient in law to be answered unto, and that each and all of the said answers of the said defendants are uncertain and untrue and insufficient to be replied unto by this repliant—

Within this, that any other matter or thing in any or either of said answers or pleae contained — is material or effectual in law to be replied unto, coufessed, avoided, traversed, or denied is true.

All of which matters, &c., this repliant is ready to aver and prove as the hon. court shall direct, and prays as in her said bill she hath already prayed.

(Signed) J. R. BECKWITH,
Sol. for Compl't.

108 *Order Dissolving Injunction in Part. Entered and Filed June* 22, '88.

United States Circuit Court. In Equity.

Mrs. FLEITAS
vs.
W. F. MELLEN *et als.* } No. 11702.

The court having heard the motion made by the defendants on bill, answer, and exhibits and affidavits filed and after due considera-

tion of the same, it is, this 22 June, 1888, ordered by the court that the injunction issued by the civil district court of the State of Louisiana for the parish of Orleans before the removal of this cause be dissolved so far as to allow the defendants, if they be so advised, to proceed to foreclose their mortgage and to enforce payment of the mortgage debt claimed by them, notwithstanding the injunction aforesaid; but in case said foreclosure proceedings are conducted to a seizure of the plantations and their appurtenances mentioned in the bill of complaint the defendants, after causing said seizure to be made pursuant to law, shall not proceed to advertisement and sale of the property seized until the further order of this court, but the defendants have leave to apply to this court or any judge thereof for a modification of this order or for such other relief or remedy as they may be advised they are in equity entitled to, and the defendants must submit themselves to the further order of this court on their foreclosure proceedings after seizure.

(Signed) EDWARD C. BILLINGS, *Judge.*

June 22, '88.

109 *Petition for Leave to Amend and Supplement the Bill. Filed June 30, '88.*

Circuit Court of the United States, Eastern District of Louisiana.
In Equity.

Mrs. CORINNE WARREN FLEITAS
vs.
WM. F. MELLEN *et al.* } No. 11702.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The petition of Mary C. W. Fleitas, complainant in the above cause, respectfully represents that since this cause was brought to this court from the State court a motion to dissolve the injunction herein has been made by the defendants, and at the hearing thereof the same was partially allowed to the extent of allowing the holder or pretended holders of the notes described in your petitioner's bill of complaint to take steps for the foreclosure of said alleged mortgage made by the said J. B. Fleitas, and thereby to cast additional cloud over your petitioner's title and to threaten the possessors of your petitioner's possession of her said property which she believes she held free from all lien or mortgage; that she is advised that
application has been made for executory process on said al-
110 leged mortgage, and that some order has been made on said
application; that for this reason and because of the refusal of full relief under your petitioner's bill, as on file and as granted by the State court, it has become necessary for this petitioner to amend her said bill to meet the new conditions that have arisen *pendente lite*, and further to file a supplemental bill herein in order that no injustice may be done.

Wherefore your petitioner prays that she may be allowed to withdraw her replication in this cause and amend her said bill so that it may conform to the facts as they now exist, and that she may defend her said title and possession against said proceedings so taken or threatened by the said defendants or some of them.

That she is advised and informed that the fact is that the said defendant who has appeared for the foreclosure of said mortgage is not the owner of said notes, but is a party without means who has been introduced into the combination and conspiracy between the defendants as a part of a scheme of extortion and usury, and that the said Shattuck and Hoffman, defendants, are the real parties in interest.

That she is advised that when false charges, withheld credits, and usurious interest are taken into account and an account between the real holder of said notes and the said J. B. Fleitas, her husband, is stated, as in law and fact it should be, and that when the proper credits are given him it will turn out that even if the pretended mortgage is a lien on the title and estate of your petitioner in form, yet there is nothing due thereon, and that in equity and good conscience none of the defendants in your petitioner's bill should *not* be allowed to assert any lien or privi-
111 lege under said pretended mortgage either against your petitioner or any other person; that in order that the real truth and facts may be brought out and that justice may be done she is advised that it is necessary that she supplement her said bill both for relief and for full and complete discovery from each and all of the defendants, and also to the end that this court may, as in law and conscience it should do, strike down all that is false, usurious, and unlawful in the dealings of said defendants out of which it is pretended the alleged debt of said F. B. Fleitas grew in order that in no event your petitioner's property shall be held to discharge any fraudulent or unjust demand of the defendants or any of them.

Wherefore your petitioner also prays that she be allowed to file a supplemental bill in this court in such form and for such relief and discovery as she may be advised by counsel is expedient or necessary for her to defend against all action of the said defendants or either or any of them; and your petitioner further prays that in the event that the defendant- or any of them are still non-residents of this district or have departed therefrom, so that they cannot be personally served with process of subpœna under such amended and supplemental bills, that service of such process may be made on any solicitor or counsel of record of said defendants, and that on such service such counsel shall be required to enter the appearance of such defendant in due form, and your petitioner prays for all such general and special relief in the premises as the nature of her cause may require or as to your honors may seem meet and just.

(Signed) J. R. BECKWITH,
Sol. for Petitioner.

112 *Order: Complainant to Withdraw Replication and Amend Bill. Entered and Filed June* 30, 1888.

Circuit Court of the United States, Eastern Dist. of La.

Mrs. CORINNE WARREN FLEITAS
vs.
WM. F. MELLEN and Others. } No. 11702.

Considering the petition of the complainant herein and the fact that the injunction granted in this cause by the State court has been modified and in part dissolved, so as to allow proceedings against the complainant looking to proceedings to attempt the foreclosure of the mortgage referred to in the bill and answer in this cause, on motion of J. R. Beckwith, sol. for complainant, it is ordered that the complainant have leave to withdraw her replication in this cause and amend her bill as she may be advised by counsel, and also that she have leave to file a supplemental bill herein for relief and discovery as she may be advised is necessary or expedient to defend against any effort to enforce any lien or mortgage against the property described in her bill of complaint and exhibits, and to defend her title as set up in her said bill, and that in the event that these defendants do not voluntarily appear in this cause to respond to such amended bill and any supplemental bill and should not — found in this district that service of subpœna or other notice be made on any solicitor or counsel of record or attorney-in-fact of said defendants, and that such service be held adequate and good.

It is further ordered that the defendants answer the
113 amended and supplemental bills within 20 days from date of filing, and that the case be considered at issue from the date the original replication was filed.

Supplemental Bill. Filed July 10, 1888.

Circuit Court of the United States, Eastern District of Louisiana.

Mrs. MARY CORINNE WARREN FLEITAS,
Wife of F. B. Fleitas,
vs.
WM. F. MELLEN *et al.* } No. 11702. In Equity.

Amendment to bill and supplemental bill of complaint.

To the honorable the judge of the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

By leave of the court first had and obtained, your oratrix, Mary Corinne Warren Fleitas, authorized by her husband, Francis B. Fleitas, as set forth in the bill herein, comes and amends her bill herein by changing the address thereof from address to the judges

of the civil district court for the parish of Orleans to
114 the judges of the circuit court of the United States for the eastern district of Louisiana, and wherein your oratrix in her said petition addressed to the said State court has styled herself petitioner amends by substituting therefor the term "your orator," in order that said pleading may accord with the rules and forms of practice obtaining in this court in proceedings in equity.

And your orator—by which style she will be hereafter designated—by like leave of the court, brings this her supplemental bill, being herein also authorized by her said husband, Francis B. Fleitas, about and concerning her own separate property, against the said defendants named in her said original bill of complaint—the said William F. Mellen, Gilbert M. Richardson, Albert E. Shattuck and Frank Hoffman, individually and as copartners under the firm name of Shattuck & Hoffman; The British and American Mortgage Company (Limited), whose residence and citizenship is as stated in said original bill herein, and against R. B. Pleasants, a citizen of the State of Louisiana, residing in New Orleans, being the marshal of the United States for the eastern district of Louisiana and an officer of this court.

And thereupon your orator showed unto your honors that on or about the 30th day of December, 1887, your oratrix exhibited her complaint or petition in the civil district court in and for the parish of Orleans against all of the said defendants except the defendant Pleasants; that, acting under alleged authority of a statute of the United States, the said defendants therein applied for and obtained an order transferring said cause to this court and filed an
115 alleged transcript of the record of said cause in this court, where the same is of record.

That, as appears by said transcript, your orator applied for and obtained a writ of injunction from said State court inhibiting the said defendants from in any manner interfering with your orator's title or possession under her title, as set up in her said original bill of complaint as set forth in said transcript, by any process that should dispossess her prior to final decree on regular and authorized process for the foreclosure of their pretended mortgage in ordinary methods of foreclosure without resort to executory process, for the reasons and upon the grounds set forth in said original bill.

That, to save repetition and expanding the pleadings herein to undue length, your orator repeats all of the statements, allegations, and averments in her said original bill, and makes all orders and proceedings had in said cause prior to the removal of said cause to this court the same in all respects as if the same had been and were recited in this supplemental bill *in extenso*, making the same a part of this supplemental bill.

That after said cause had been removed to this court and after the commencement of the April term thereof, A. D. 1888, the defendants moved this court to dissolve the said injunction; that said motion was heard and the court made an order in the cause whereby your orator lost all of the practical value and effect of her said bill, and whereby it is claimed by the said defendants that they have the

right to utterly disregard the rights of your orator and the legal title vested in her as set forth in her original bill, and that
116 they have the right to forcibly oust and dispossess your orator from all of said property described in her original bill by summary and illegal proceedings to foreclose the said alleged mortgage alleged to have been executed by the said F. B. Fleitas as set forth in said original bill, which said order is of record in this cause and is made a part hereof.

That the said defendants made some sort of answer to said bill without any regard to the decent forms in proceedings in equity. The said defendant Richardson attempting to answer through the conscience and oath of the defendant Mellen as his attorney-in-fact, contrary to all rules in equity proceedings and to the right of your orator to have a sworn answer by the said Richardson, your orator refers to all of the answer- of the said defendants now of record in this cause as they are of record, with all of the evasions and want of certainty and non-observance of the rules for orderly proceedings in equity contained and manifested thereby.

And your orator further shows that the said defendants, after obtaining said order dissolving your orator's injunction granted by the said State court, waited until the day before the final adjournment of the said April term of this court, knowing that on the next day the last Federal judge having authority to make any order in the cause or in any proceedings in said court would depart from the jurisdiction of the court, and that the circuit would be destitute of any judge present to act in any cause, — caused the said defendant Gilbert M. Richardson, acting then, as at all times before, not personally but through the said defendant Mellen, he doing the
117 swearing for him, — filed and exhibited in this court a paper, sometimes designated a petition and sometimes designated a bill of complaint, a copy whereof is hereto annexed and made a part hereof to the same extent and effect as if the same was copied into this bill *in extenso*, the same being marked "Exhibit A."

That said defendants caused said paper to be presented to one of the judges of this court, who indorsed thereon the following order:

"*Order.*

Let a writ of seizure and sale issue as prayed for and according to law to satisfy complainant's demands, as set forth in foregoing bill and petition. Let the marshal seize and take into his possession according to law the property described in the foregoing petition, and then let the sale of this property be stayed till the further orders of this court."

New Orleans, June 29th, 1888.

(Signed) E. C. BILLINGS, *Judge.*

That the property referred to in said order is the said property of your orator described in her original bill and purchased by her under the writ of *fi. fa.* issued on the said judgment in her favor for the return of her said paraphernal property, as set out in her

said original bill herein. For certainty your orator refers to an attested copy of said order indorsed on said petition "Exhibit A."

That upon obtaining said order the defendants or some of them took said petition and order to the clerk of the said circuit court, who, wrongfully claiming that the said order was made by lawful authority, with lawful jurisdiction in the judge to make said order, at once set about giving said order effect, and made and
118 issued a certified copy of said papers and also a certain notice to be served on the said F. B. Fleitas, named in said proceedings, demanding of him that he pay some indefinite sum of money to the said Richardson within three days, or that the said property of your orator would be seized from her possession to pay and satisfy the sum said to be named in an alleged writ of seizure and sale, of which there is no record in this court other than the nondescript papers above referred to and made exhibit to this bill.

That the said notice so served on said F. B. Fleitas is in the original thereof made a part of this bill, marked "Exhibit B," and for certainty made a part hereof; that since said order was made and said petition filed in this court it stands as No. 11722 of the docket of this court, to which cause and to all of the papers filed and orders therein your orator refers at all times for certainty in respect thereto.

That your orator was in no manner made a party to said proceedings or notified thereof, although it is pretended that the same is a judicial proceeding by which she can be ousted from possession of her said property so held by her under full legal title, as set forth in her original bill herein, nor was any notice thereof given to the said F. B. Fleitas but a pretended final decree made in the cause or by the defendants pretended to be sufficiently final to pass title under the threatened sale without giving the said F. B. Fleitas a day in court thereon or any lawful notice or process known either in equity or common law.

That early on the morning of the 30th day of June, by accident, the said F. B. Fleitas learned that said action had been taken,
119 and, believing the same illegal and without warrant of law and feeling aggrieved thereby, applied to the Honorable E. C. Billings, the only judge of said court within the district, for an appeal from said final decree to the Supreme Court of the United States, and that the court fix the bond that should operate a supersedeas; that although the counsel for the said defendants and the said Richardson well knew that under the jurisprudence of the State of Louisiana the said order of seizure and sale (so termed in Louisiana State court proceedings) was and is a final decree and judgment and as such appealable, and although in litigation in which the said defendants or some of them were interested or parties in fact the supreme court of the State had, at the instance of the said parties and on their plea, as your orator is informed and believes, procured and obtained from the supreme court of the State of Louisiana a judgment and decree that an order of seizure and sale was in all respects a final decree, and for that reason that although obtained in the State court *ex parte* and without notice,

yet the victim or mortgagor could not transfer such a cause to the Federal courts because the order made was and is a final decree, which said opinion and judgment of the said supreme court was and is reported in the State report in the case of Ralston *et al. vs.* the said defendant herein, The British and American Mortgage Company (Limited), in the 37th Louisiana Annual Reports, on page 193, the said counsel for said defendants in this action and petition in said case No. 11722, desiring to oppress and wrong your orator, appeared in said petition and opposed the same and obtained from the said judge an order refusing any appeal to the said F. B.
120 Fleitas from said final order, procuring from said judge an opinion that the said decree was and is not final, with no indication from the court at what stage in the proceedings the decree would become final in his opinion, leaving the said defendant in said proceedings for seizure without remedy against said illegal order, although the said defendant Mellen, in answer for the defendant Richardson, swore that the property claimed to be subject to said mortgage was more than ample security, or statements making that conclusion of fact a part of the pleadings beyond contradiction.

That immediately after the said judge had so refused the said F. B. Fleitas an appeal as aforesaid the only judge within reach of your petitioner left for New England, the circuit judge being, as your orator believes, spending the summer in the State of Ohio, far beyond the limit of the 5th circuit.

That your orator is in no manner made a party to said proceedings for seizure and sale, although the same is in fact directed to operate on her property and dispossess her in an *ex parte* proceeding against another person not in possession of said property or any part thereof.

That she has been in possession of said property as owner thereof since the day of her purchase thereof as set out in her original bill.

That she has expended large sums of money and incurred debts to prepare said land for and to grow crops thereon during the present season; that a part of said plantation is in sugar cane partially grown and requiring great additional expenditure and labor to complete and mature the crop, without which it will be
121 lost; that a large portion of said land is planted in vegetables commonly called truck, of great value, but also requiring large additional expenditure of money and labor to mature the crop and take it to market, and that a seizure thereof as threatened means more than dispossession of your orator, but an enormous loss in existing immature crops and damage in not being able to fit and fertilize said plantation for a crop during the coming or next season, and will in all things accomplish all of the ruin which your orator sought to avert by the injunction granted her in the State court.

That your orator is informed and believes that the said defendant Richardson, put forward by said defendants as the mortgagee and responsible plaintiff in said illegal proceedings, is a man of no

property or responsibility, but is interposed by said defendants Shattuck and Hoffman or the said British and American Company (Limited) to complete and carry out a scheme or schemes of extortions and usury and shield them from consequences by enabling them to mask themselves behind his insolvency or want of financial responsibility to respond to damages caused by the illegal acts of those acting behind him; that the said Richardson, so far as your orator can ascertain, acts at all times by proxy, pleading and swearing by or through an attorney-in-fact, and your orator believes, and therefore avers, that he is a tool of said above-named defendants or some of them, and the pretense that he is the real mortgagee or the party who furnishes money for the other defendants to loan is, as she believes, a sham and not true, and that if the illegal order of seizure and sale of your orator's property is
122 effected in said illegal proceeding with the said Richardson as plaintiff alone responsible, your orator will be in fact remediless and without prospect of indemnity for her losses incident thereto.

And your oratrix further shows unto your honors that she is advised, informed, and believes and therefore avers that said alleged mortgage of the 28th day of January, A. D. 1884, filed with and made a part of said alleged executory proceedings No. 11722, in form as the same exists and is made an exhibit in and a part of said proceedings is an act upon which no court in the State of Louisiana considering the same could or would have granted executory process; that the said process and proceeding is peculiar to the laws of Louisiana and, as your oratrix believes, does not exist and ought not to exist in any other State; that it is an indispensable condition under the laws of Louisiana to the issue or allowance of an order of seizure and sale that every matter of fact and thing necessary to be considered by the court in granting the order of sale should be by authentic act, executed before a notary public and attested by two witnesses, or a judicial decree; that if there be any fact or thing necessary to determine or establish the relation of the party applying for such process to the owner of the property against which the same is directed requiring the consideration of evidence other than such authentic evidence the process cannot lawfully issue; that the said mortgage executed by the said Fleitas on the 28th of January, 1884, as alleged in said proceeding, is not on the face thereof of the character or description on which any State court in the State of Louisiana could or would grant the process, in that the
123 matters and things therein contained and necessary to be considered to determine whether there is any indebtedness under the mortgage are not authentic or attested by the acknowledgment of the said F. B. Fleitas before a notary public and two witnesses; in that in the body of said mortgage and as a part of the obligation thereof and as a part of the conditions on which the same was granted there occurs the following statement: "And whereas the said appearer (meaning the said F. B. Fleitas, mortgagor) has obligated and does by these presents, in consideration of the mutual covenants and agreements and benefits provided and contained in

certain articles of agreement executed the 28th day of January, A. D. 1884, between the said appearer and Mess. Shattuck & Hoffman, cotton factors and commission merchants, of New Orleans, La., a commercial firm composed of Albert R. Shattuck and Frank B. Hoffman, and to which reference is now particularly made, obligate himself, the said appearer, his heirs, executors, administrators, and assigns, to gather — put in condition to ship to market as rapidly as possible the crop of sugar and molasses — cotton that the said appearer, his heirs, executors, and assigns, may raise upon or control upon the property hereinafter described during the years 1884, 1885, 1886, 1887, and 1888 and during any following year or years, so long as any portion of the debt secured or intended to be secured by this act shall remain unpaid, and to ship said sugar, cotton, and molasses, as the same may be ready for market, to the said Shattuck & Hoffman, in New Orleans, to be by them sold on arrival at their option; and whereas under said articles of agreement said
124 appearer expects to and may become indebted to Shattuck & Hoffman during said year or years on open account or otherwise for money paid out and advanced to and for said appearer in and about the making, handling, cartage, storage, insurance, and sales of said crop of sugar and molasses or otherwise, but which indebtedness to said Shattuck & Hoffman shall in no event exceed in aggregate the amount equal to said indebtedness to the said Gilbert M. Richardson;" to which and to other matters contained in said notarial act your oratrix refers, not only to said copy of the act of mortgage filed in said executory proceedings, but to the one filed in this case as an exhibit to said original bill.

Your oratrix further shows unto your honor that the said stipulation contained in said act of mortgage not only indicates the combination and confederacy between said Shattuck & Hoffman and the said Richardson, but also indicates and declares that the entire obligation referred to and secured by said mortgage was not and is not the notes referred to, but was and is, among other things, a mortgage to secure the performance of an unauthentic act not of the class or nature or character of evidence available as a basis for any executory process.

And your oratrix further shows unto your honor that she has been able to obtain a copy of the said memorandum of agreement of the 28th day of January, 1884, incorporated in said act of mortgage, but being unauthentic in character as aforesaid, and that she attaches hereto a copy of said memorandum of agreement referred to in said mortgage, which is made a part of this her bill of complaint to the same extent and effect as if the same had been
125 copied into her said bill *in extenso*, said copy of the said contract being marked Exhibit E and filed herewith.

That under and by virtue of the light thrown upon said transaction and mortgage by said unauthentic act it appears that at the time of the execution of said notes and the execution of said mortgage the said F. B. Fleitas was in no manner indebted to the defendants or any of them; that she verily believes that the said memorandum of agreement of the 28th day of January, 1884, re-

ferred to in said mortgage, was not made authentic in order to conceal from the public the methods of business pursued and carried on by the said defendants or their schemes and devices for extorting usurious interest and considerations for the lending and advance of money; that in and by the terms of said unauthentic agreement she is advised and informed that the said alleged notes referred to in said mortgage did not at that time represent any indebtedness whatever on the part of the said Fleitas, the defendants, or any of them, but that the said notes were executed to cover future advances which the defendants or some of them had promised to make, and made provision that at least $24,000 of the said money represented by said notes was to remain in the hands of the said Shattuck & Hoffman and to be delivered to the said Fleitas on his draft or on certain condition set out in said unauthentic contract; that there is in existence not one particle of authentic proof of the character required as the basis of executory process that one dollar of the money represented in and by said notes and said mortgage ever came into the hands of the mortgagor, and that in order to
126 establish the fact that a single dollar of said money ever did reach his hands or that the mortgage became a security for a dollar of it would involve the court in the examination of accounts and in hearing testimony of a character other and different from the authentic testimony required and indispensable as the basis for executory process, and that for that reason the court, in granting and allowing the executory process complained of, wherein, — if the court had jurisdiction in other respects and authority to make and execute said order, said order is absolutely null and void, from the absence of the conditions and character of proof indispensable as a prerequisite to such action, even where the court had jurisdiction to allow the process; that this want of authentic evidence and the necessity therefor was, as your oratrix verily believes, well known to the said defendants and their counsel, and the real character of said mortgage and particularly the real character of the said unauthentic act referred to in said mortgage and the fact that it was a part of the obligation contained in said mortgage was concealed from the court, and that the court acted upon the supposition that the said unauthentic proof in no manner affected the relation of the parties, and if the act had been considered in determining the question whether on the papers presented to the court there was a case where executory process could be granted no such process could and would have issued from a court having competent power to issue executory process and governed by the law.

And your oratrix further shows unto your honor that she is advised and believes that said alleged proceeding for executory process in 11722 of the docket of this court is not and never was
127 a proceeding had at law; that she is advised and informed that there is no act of Congress conferring authority upon the circuit courts of the United States to adopt the practice and methods established in the State within which said Federal court is sitting, except such as relate to common-law procedure and in common-law cases, or the equivalent thereof; that the said proceeding by execu-

tory process is not a common-law proceeding, nor is it similar or akin to any common-law proceeding, either in England or in any of the States of the United States, with which your oratrix is familiar, as she is advised and believes, and that therefore the said judge had no warrant whatsoever, in any authority conferred upon the circuit court, by any act of Congress or the Constitution of the United States, to entertain the said proceeding as a proceeding adopted or warranted by any Federal authority or legislation; that she is further advised and therefore avers that if the cause be a cause of equity the proceeding is equally null and void for the reason that the equity jurisdiction conferred upon the Federal courts is such as is conferred by the Constitution of the United States and has been construed *by* mean such jurisdiction as was entertained and held by the English courts of equity at and prior to the adoption of the Federal Constitution, and that proceedings in equity, as they are entertained in the circuit courts of the United States, are limited, controlled, restricted, and directed by the acts of Congress and the rules of the Supreme Court of the United States made under authority of acts of Congress, and that there is unknown, either in equity proceedings in England or any known equity proceedings in this
128 country or in any of the rules or adjudications of the Supreme Court of the United States relating *the* equity, an equity proceeding commencing with a final process and which final process for the sale of her mortgage property is the initial and, unless the defendant sees fit to become an actor, the only proceeding in the record.

That your oratrix is further advised and informed and therefore avers that the circuit court of the United States is a court of limited jurisdiction; that it can only acquire jurisdiction in one of two forms, either *rationæ materiæ* or *rationæ personæ*; that in *rationæ personæ* jurisdiction it is indispensable to the jurisdiction of the court that there be — defendant who shall either be an actual or a juridical person, and that the said proceeding of seizure and sale as instituted and sought to be consummated in this case is, in fact, a proceeding *in rem*, with a nominal plaintiff upon the one side and a *res* or thing upon the other, and that the proceeding contemplates, in so far as any action on the part of the party applying for process is concerned, an entirely unilateral proceeding in which the defendant shall not have his day in court in virtue of any incident being a part of the form of proceeding; that she is also advised — informed that the said notice issued by the clerk and made an exhibit to this her supplemental bill, being a demand upon the mortgagor to pay an amount already adjudged, has none of the features and cannot be considered in any form a process of citation or summons at law or subpœna in chancery, and does not contemplate that the party notified shall have any day in court, unless he should see fit to become an actor himself and summon the plaintiff, petitioning
129 for executory process, into the court as a defendant in another action.

That she is advised and believes and therefore avers that the said proceeding for executory process, if it had no other vices than

those apparent upon the face of it, is absolutely null and void and *corum non judice*, both in substance and in form and effect, and ought not to prevail to oust and dispossess a third person not a party to the record of possession under a legal and sufficient title, a sheriff's deed and sale, made under regular judgment and due precept thereon, and that the sole office of the said irregular and illegal proceeding and action is to harrass and embarrass your orator, and if the said defendant Pleasants, United States marshal, shall undertake to execute or carry out said process it will have the effect to temporarily dispossess her and oust her from her legal possession, cut off and destroy any possibility of profit that might result to her from the carrying on of said plantation during the current season, endanger and impair her credit, and lead to the loss and destruction of the growing crops thereon, and, as she is advised and informed, leave her no possible chance of indemnity if she had to look alone to the said defendant Richardson, and that, in any event, she could only be indemnified for the wrong that can or would be done to her rights under said illegal process at the end of long and expensive litigation at law against said wrong-doers, through whose instrumentality and upon whose motion said illegal process was obtained.

And your oratrix further shows unto your honors that she is advised and informed and therefore avers that the said memorandum of agreement of the 28th day of January, 1884, referred to in
130 said mortgage and made part, by copy and exhibit, of this bill, had the effect, if the pretense of the said Shattuck & Hoffman that the money advanced was the money of the defendant Richardson be true, to make and constitute the said Shattuck & Hoffman, not only the agents and trustees of the said mortgagor, but also the agents and trustees of the said mortgagee, and that, if their pretense that the said Richardson alone was interested in the said notes secured by the said mortgage be true, it would place the said Shattuck & Hoffman in relation to both mortgagor and mortgagee in a position such that they were bound by conscience and common integrity to a faithful discharge of the said trust; that the entire transaction- between the said defendants are clandestine and secret in their character, and that your oratrix is unable to ascertain the exact relations between the parties or the exact nature of the combination between them or who exactly is the real party in interest; but if it be averred and asserted by the said Shattuck & Hoffman, as it has been averred and asserted by the said Richardson, through his attorney-in-fact, Mellen, in answer to your oratrix's original bill, that the said money said to have been advanced and to be a consideration of said promissory notes named in said mortgage was not at any time the property of the said defendant Richardson and was at any time due to him, then, under and by virtue of the terms and conditions of said memorandum of agreement of the 28th day of January, 1884, the said Shattuck & Hoffman were bound to fair dealing, not only in respect to the said Richardson, but in respect to said mortgagor, F. B. Fleitas, and the said agreement

providing for the forced consignment to the said Shat-
131 tuck & Hoffman of all the products grown or raised on the said property by the said F. B. Fleitas made the said Shattuck & Hoffman agent- for both parties for the fair administration of their trust, so that the proceeds of the sales of sugar and molasses or other products so forcibly consigned to said Shattuck & Hoffman should be honestly dealt with, honestly sold, and honestly applied as a credit to the said mortgagor; that she is advised, informed, and therefore avers that the said Shattuck & Hoffman were unfaithful in the discharge of their obligations to the said F. B. Fleitas; that during the years 1884, 1885, and 1886 the said Shattuck & Hoffman received from the said F. B. Fleitas very large consignments of sugar and molasses, being the entire crop on both of said plantations described in said mortgage, and that if the said Shattuck & Hoffman be compelled to come to a true, just, and honest account of the said property so received by them and be compelled to account for such moneys as ought to have come to them from the sale of said property, and that all unjust and unlawful extortion from or charged by them against the said F. B. Fleitas were considered and credited as he ought to be and in equity should be, that as the result of such an account it would appear that the said F. B. Fleitas is in no manner indebted to the said defendants or any of them either by reason of the said notes referred to in said proceeding for executory process or in said mortgage or for any other reason, and therefore she prays and insists that the said Shattuck & Hoffman shall be compelled to come to a true and exact account of all the goods, merchandise, property, and products, sugar and molasses, that
132 came into their hands under and by virtue of the said memorandum of agreement of the 28th of January, 1884, and any and all other contracts or agreements that may have been made or entered into in relation to said mortgage or said alleged note secured by said mortgage and an account of all usury, untruthful accounting, or any other abuse of the said trust imposed upon them by said agreement, and that if it shall appear in and by said account, after correcting all diminution of the proceeds of said property resulting from incorrect returns of accounts of sales, all exactions — made by any direct or indirect device or scheme for extorting usurious interest, whether it be in case of excessive commissions, excessive charges for insurance, or any other reason, said sum so ascertained should be decreed to be in no event a lien or charge against the title or estate of your oratrix in the premises, even if it shall be held that the said defendants or any of them have any lien or privilege on the property of your orator under and by virtue of anything contained in said alleged mortgage of the said F. B. Fleitas of said date of January 24th, 1884, set up in said executory process.

And your orator further saith that she is advised and believes that when the said Shattuck and Hoffman shall be compelled to come to a true and just account of all their extortion of the true and exact amount of the sugar, molasses, and other products and property of the said F. B. Fleitas had and received by them after the date of the execution of said alleged mortgage under the memoran-

dum of agreement above set forth and referred to in said act of mortgage and under like and similar agreements and shall be compelled to account therefor and strike out all illegal and usurious
133 exactions of alleged interest, warehouse charges, excessive charges for insurance, and all other false and illegal charges it will appear that even if in any event the said pretended mortgage could bear upon the estate and title of your orator the same will be found to have been paid and discharged, if not to the full extent, until but a trifling sum is due thereon or should be enforced against any property described in said mortgage, even if the title had remained in the said mortgagor.

Wherefore your orator prays that the said defendants, and particularly the said defendants Shattuck and Hoffman, as individuals and as copartners, may be compelled to make full, exact, and complete disclosure, not only of their exact relation to the money alleged to have been loaned to the said F. B. Fleitas under said alleged mortgage, but also the true and exact relation of the said defendants Richardson and Mellen thereto, and a full, true, and exact transcript of any and all correspondence by and between any, each, or all of the defendants or any other persons in any way relating thereto, and a full, true, and exact statement of all property that they or any of them have had or received of or from the said mortgagor, Fleitas, since the date of said mortgage, and, if sold and converted into cash, at what price and also what deductions or charges they have made for any and all grounds or excuses whatsoever, and whether each and every of said charges or deductions is true, just, honest, and lawful, when made and on what pretence, and the true and exact sums, amounts, and total of the moneys carried to the credit of the said F. B. Fleitas and all moneys not paid over
134 to the said Fleitas, how the same were used and applied, and by what authority the items and total of all commissions or charges exacted from the said mortgagor since the date of said mortgage, when exacted, and for what purpose or on what excuse or alleged warrant, and that they be permitted to withhold or conceal no book, paper, letter, or writing of any character in any way relating to their dealings with F. B. Fleitas, the said pretended mortgagee, Richardson, or with or amongst each other in any way relating to said dealings with Fleitas since the date of said alleged mortgage, or to any money alleged to have been loaned under the same or showing who was and is the true party or person to whom the said money belonged and from whom it really was loaned, if loaned at all, and the true and exact financial standing and property of the said defendant Richardson, and why his name was used as the nominal mortgagee, and that the court lay such order or orders on them as shall bring all such books, papers, writings, and evidence into court for full and exact inspection and verification or disproval of any sworn answer they may make to this bill, and that the court from time to time, as occasion or justice may demand, permit your orator to propound to the said defendants, any, all, or each of them, such special interrogatories relating to such matter, to be answered under oath, *or* shall be necessary or expedient to bring out

and show the real truth in the premises and get at the exact dealings of the defendants with each other and with the said mortgagor and as will enable the court to reach the true and exact state of the account that ought to be stated free from all frauds and usury, so that in the event that it shall be held that said mortgage af-
135 fects the title of your orator it shall not be held to be security for any fraudulent, usurious, or illegal items or amounts.

Your orator, however, at all times denies that said mortgage in any way affects or bears on the estate of your orator, and again avers that the laws of the State of Louisiana relating to mortgage and marriage contracts are laws of public order and never were in any manner affected by any general bankrupt law of the United States; that she makes the statute of the State of Louisiana in relation to marriage and dotal and paraphernal property and the marriage relation as they existed at the date of her said marriage contract, at the date of the execution of said pretended mortgage, and at all times since that date a part of this bill of complaint as said statutes are printed by authority and promulgated and in all things insist- thereon and on her rights thereunder.

That the said proceedings in the State court in the parish of St. Bernard resulting in a judgment in her favor for a dissolution of the community and the restitution of her paraphernal property and all proceedings thereunder were and are just, legal, and honestly conducted, and that said judgment was in all things published as required by law, and that the title acquired by her at sheriff's sale thereunder — full, complete, and perfect as against any lien, claims, or pretended mortgage set up by the defendants or any of them.

That she is advised that the said defendant Richardson and his attorney-in-fact, the defendant Mellen, will be alike responsible in law for any loss and damage which may result from any
136 illegal trespass on the property of your orator by any attempted levy of the said void and illegal pretended writ of seizure and sale, but that neither or both of them have or possess property sufficient to indemnify your orator for such loss and damage, and also that the official bond of the defendant Pleasants is also inadequate to indemnify her for the loss and damage resulting from being dispossessed under said unlawful and void proceedings, and that she is advised that the said Shattuck and Hoffman will, by all means in their power, attempt to evade all responsibility in themselves by putting forward others as nominal disseisors.

That your orator is remediless except in a court of equity, in which by its traditions the very right and justice is or ought — reached and enforced.

To the end, therefore, that the said defendants may, if they can, show why your orator shall not have the relief herein prayed for, your orator prays that the said defendants, each and all, may be by due process compelled each for himsef and not by attorney-in-fact or proxy (as heretofore) on his corporeal individual oath full, true, complete, and exact answer make to the premises the same in all respects and particulars as is specially interrogated thereto con-

*tain*ing each and every particular, and be compelled under oath full and complete discovery to make and disclose as herein prayed for.

And your orator again prays for all of the relief and discovery prayed for in her said original bill herein, and that her said title may be in all things held and decreed to be good and valid
137 and not affected by said pretended mortgage set up by the said defendants or any of them, and that she may be quieted therein and all cloud removed from her said title growing out of any of the pretentions of said defendants or any of them.

That said proceedings in the matter of Gilbert M. Richardson *vs.* Francis B. Fleitas, No. 11722 of the docket of this court, pretended proceedings for seizure and sale, may be decreed to be in all things null and void, and that the court had no authority to proceed therein, and that the said defendants and their counsel and the said defendant Pleasants, marshal, be both personally and perpetually inhibited and enjoined from taking any step, seizure, or doing any act under pretended warrant of said proceedings or any writ or order or pretended order therein or in any manner disturbing your orator in her possession of her said estate and property described in her said original bill or in said pretended mortgage or casting or throwing any cloud on her said title, and that the court save and reserve unto your orator a right of action at law against the said defendants, each and all of them, their counsel, attorneys, and all aiders and abettors for all damages caused by them to your orator by resort to void process and proceedings to injure and harrass your orator and impair her right or peaceable possession and enjoyment of her estate and property by the use or threatened use of pretended process known to be void as well to the nominal parties as to their counsel and agents in said wrongs.

And that the said defendants in said original bill, the said Wm. F. Mellen, said Gilbert M. Richardson, said Albert E. Shattuck and Frank B. Hoffman, individually and as the commercial firm
138 of Shattuck and Hoffman, and the said British and American Mortgage Company (Limited) and the said Reuben B. Pleasants, marshal as aforesaid, may by due process of subpœna be commanded to be and appear in this honorable court on a day certain to be named in said writ, and then and there true answer make to the premises, and stand to and abide any and all orders and decrees your honors may deem fit to make in the premises or such as the nature of the cause may require; and your orator prays for all general and equitable relief in the premises, and will ever pray, etc.

(Signed) M. C. FLEITAS.

(Signed) J. R. BECKWITH,
Sol. & Counsel for Complainant.

My said wife brings the bill with my authorization.

(Signed) F. B. FLEITAS.

EXHIBIT. Filed with Supplemental Bill July 10, 1889.

Notice of Order of Seizure and Sale. Issued June 30, 1888.

Circuit Court of the United States, Fifth Circuit, Eastern District of Louisiana.

139 GILBERT M. RICHARDSON *vs.* B. F. FLEITAS. } No. 11722.

To F. B. Fleitas:

Take notice that payment is demanded of you within three days from the service hereof of the amount specified in the writ of seizure and sale granted on the bill of complaint herein, a copy of which accompanies this notice, with interest and costs; and in default of payment within that delay the property referred to in said bill of complaint will be seized and sold according to law, subject to the order on said bill.

A further delay of one day for every twenty miles distance from your domicil to this city, at which place this court is held, is allowed you by law.

Clerk's office, New Orleans, June 30, 1888.

[L. S.] (Signed) E. R. HUNT, *Clerk.*

Copy of Bill Accompanying Notice, &c.

United States Circuit Court, Eastern District of Louisiana. Equity Docket.

140 GILBERT M. RICHARDSON *vs.* FRANCIS B. FLEITAS. } No. 11722.

To the honorable the judges of the circuit court of the United States, fifth judicial circuit, eastern district of Louisiana:

Your orator, Gilbert M. Richardson, who is a citizen of the State of New York, residing in the city of New York, in said State of New York, unto your honors respectfully shows—

That Francis B. Fleitas, who is a citizen of the State of Louisiana, residing in the parish of St. Bernard and within the jurisdiction of this court, on the 28th day of January, 1884, being then indebted to your orator in the sum of sixty-three thousand dollars for money lent, executed and delivered to your orator his five promissory notes of that date, to the order of your orator, and payable at the Louisiana National Bank of New Orleans, La., with interest from maturity at the rate of eight per cent. per annum, each for the sum of twelve thousand six hundred ($12,600) dollars, to mature January first (fixed), 1885, 1886, 1887, 1888, and 1889, respectively, and having attached one, two, three, four, and five interest coupons respectively.

That to secure the full and punctual payment of all said notes and coupons the said Francis B. Fleitas, by authentic act of mortgage passed before Benjamin Ory, a notary public in and for the parish of Orleans, on the said 28th day of January, 1884, did specially mortgage and hypothecate in favor of your orator and his assigns and in favor of all subsequent holders of said prom-
141 issory notes the following-described property, including the buildings, fixtures, and all improvements and appurtenances situated thereon, to wit: First, a certain tract of land or plantation known as the "Myrtle Grove," situated in the parish of St. Bernard, in the State of Louisiana, on the left bank of the River Mississippi, at about two and one-half leagues below the city of New Orleans, measuring about twenty arpents, more or less, front on said river, but on a line measuring at right angles from the intersection of the levee with the lower side measuring nineteen arpents and twelve toises in width, and having on the lower side line, which separates it from the lands of Ducros, a depth of two hundred and thirty-one and one-half arpents, and on the upper side line, which separates it from the property of Gabriel Villeré, a depth of one hundred and ninety-seven and one-third arpents, both rear lines diverging four degrees fifty-four minutes and thirty seconds and running to the property of Antoine Michaud, which bounds said plantation in the rear, being the property which said F. B. Fleitas acquired from L. E. Lemarie by act passed January 7th, 1882, recorded in Book No. 15, fol. 121, 123, of the records of conveyances of St. Bernard parish, La.; second, a sugar plantation situated in St. Bernard parish, at about seven miles below the city of New Orleans, on the left bank of the River Mississippi, measuring about nineteen arpents front on said river by a depth extending up to Lake Borgne, bounded on the upper line by property belonging to Messrs. Erreville F. Villeré and Denis Villeré and on the lower line by the plantation of A. W. Walker, being the property which the said F. B. Fleitas ac-
142 quired from Mrs. B. Fleitas by act of sale dated April 28th, 1877, and registered in Book of Conveyances No. 13, p. 194, of the records of St. Bernard parish, La., and known as the "Corinne" plantation; and also all the engines, boilers, kettles, and other machinery, and all other property of whatsoever name or description immovable by destination then on or that might be thereafter placed on or attached to said plantations or either of them.

That in and by said act of mortgage said Fleitas bound himself to pay and reimburse unto your orator and holders of said notes all such attorneys' fees, all costs, charges, and expenses as your orator might incur or pay in the event of non-payment of said promissory notes at maturity or of any legal proceedings being instituted at any time for the protection or preservation of the rights of the mortgagee or any future holder of said notes, said attorneys' fees to be fixed at five per cent. on the amount in suit and unpaid; and said Fleitas also, in and by said act of mortgage, further bound himself and his heirs not to alienate, deteriorate, or encumber said mortgaged property to the prejudice of said mortgage act.

That said F. B. Fleitas, in and by said act of mortgage, declared and acknowledged his indebtedness to your orator as evidenced by said notes and coupons and consented and stipulated that in the event the debts or any portion thereof secured or intended to be secured by said act of mortgage should not be punctually paid when due it should be lawful for, and he thereby authorized your orator or any subsequent holder of said notes to cause, said mort-
143 gaged property to be seized and sold under executory process, without appraisement, to the highest bidder, for cash, and expressly confessing judgment in favor of your orator and all holders of said notes for the full amount thereof, capital and interest, together with all costs, charges, and expenses whatsoever.

That said five promissory notes hereinbefore described and all the interest coupons thereto attached were by said notary duly and legally paraphed "*ne varietur*" to identify them with said act of mortgage and were then, with said act of mortgage, delivered to your orator as aforesaid, represented in said act by his agent and attorney, Wm. F. Mellen, who received said notes and accepted said mortgage for your orator.

That said act of mortgage was filed for record in the mortgage office of Saint Bernard parish January 29th, 1884, and duly recorded in Mortgage Book No. 12, pp. 80–87, of the mortgage records of said parish.

All of which will appear by reference to a certified copy of the said original act of mortgage, hereto annexed, marked Exhibit "A," and made a part hereof, and to the two of said promissory notes maturing according to their tenor January 1st (fixed), 1888, and January 1st (fixed), 1887, respectively, and the coupons annexed thereto, viz., three each for $1,008, two maturing January 1st, 1888, and one January 1st, 1889, which two notes and coupons are still held and owned by your orator and hereto annexed as Exhibits B, C, D, E, and F, made part hereof.

That all the others of said notes and coupons have been paid and satisfied and cancelled.

144 That said Shattuck & Hoffman, a commercial firm named in said act of mortgage, have no interest in said notes, and your orator is informed and believes that they have no interest in said act of mortgage. Your orator has given them notice of this proceeding.

Your orator avers that under said notes and mortgage there is now past due and owing to your orator by said F. B. Fleitas the sum of twenty-five thousand two hundred dollars ($25,200), as evidenced by the two said unpaid principal notes, with interest, at eight per cent. per annum thereon, from January 1st, 1888, and the sum of two thousand sixteen dollars ($2,016), as evidenced by the two coupons which fell due January 1st, 1888, with interest thereon, at five per cent. per annum; from January 1st, 1888.

That amicable demand for the payment thereof has been made and refused.

The premises considered, your orator prays that said mortgage may be rendered executory; that a writ of seizure and sale may

issue according to law; that after all legal delays said mortgaged property may be seized and sold to satisfy the amount of plaintiff's demand as herein set forth, to wit, twenty-seven thousand two hundred and sixteen dollars, with interest on twenty-five thousand and two hundred dollars thereof, at eight per cent. per annum, from January 1st, 1888, and on two thousand and sixteen dollars thereof at five per cent. from January 1st, 1888, and five per cent. attorneys' fees on said amount so in suit and all costs; that said sale may be for cash without appraisement. He prays for all and general relief in the premises; and, &c.

(Signed) WM. F. & D. C. MELLEN &
THOS. J. SEMMES,
Sol'rs for Compl't.

145 STATE OF LOUISIANA, }
Parish of Orleans. }

Before me, the undersigned authority, personally came and appeared William F. Mellen, who, being sworn, says that he is the attorney of the complainant in the foregoing bill; that said complainant, Gilbert M. Richardson, is absent from this city and State, and that all the allegations of the foregoing bill are true in substance and in fact to the best of his knowledge and belief.

(Signed) WM. F. MELLEN.

Sworn to and subscribed before me this 28th day of June, 1888.

[L. S.] (Signed) BENJAMIN ORY, *Not. Pub.*

Notice of the foregoing bill and the allegations thereof acknowledged and accepted.

(Signed) SHATTUCK & HOFFMAN,
P'r JNO. G. ROWLAND.

Order.

Let a writ of seizure and sale issue herein, as prayed for and according to law, to satisfy complainant's demands as set forth in foregoing bill and petition. Let the marshal seize and take into his possession according to law the property described in the foregoing petition, and then let the sale of this property be stayed till the further orders of this court.

New Orleans, June 29th, 1888.

(Signed) EDWARD C. BILLINGS, *Judge.*

146 CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

Witness my hand and seal of said court, at the city of New Orleans, this 29th day of June, 1888.

(Signed) E. R. HUNT, *Clerk.*

Agreement.

This memorandum of agreement, made this 28th day of January, 1884, by and between the commercial firm of Shattuck & Hoffman, of New Orleans, Louisiana, of the first part, and F. B. Fleitas, of St. Bernard parish, of the second part, witnesseth :

1. Said Shattuck & Hoffman will, as agents for said Fleitas, undertake to negotiate for said Fleitas a loan of sixty-three thousand dollars, payable one-fifth annually on the first day of January (fixed), 1885, 1886, 1887, 1888, 1889, respectively, with interest at eight per cent. per annum from date of loan annually as it accrues; said interest to be evidenced and represented by coupon or interest notes. Said loan is to be secured by a first mortgage on the Corinne and Myrtle Grove plantations of said Fleitas, in St. Bernard parish, Louisiana.

2. In consideration of the premises said Fleitas will allow and pay to said Shattuck & Hoffman an amount equal to two and one-
147 half per centum (2½ %) of said sum of $63,000 as commissions; and he, moreover, obligates himself to said Shattuck & Hoffman, their assigns and successors, to ship all the crop of sugar and molasses grown or controlled by him during the continuance of said loan and mortgage for sale by said Shattuck & Hoffman on arrival, at their option, for account of said Fleitas, and that his said shipments shall be such that the gross proceeds of the sale thereof shall in no year be less than eighty thousand dollars ($80,000). For the handling of said sugar and molasses—the sale thereof—said Fleitas will allow and pay to said Shattuck & Hoffman a commission of two and one-half per cent. on sales and all the ordinary and usual charges incident to such business as established by the customs of merchants in New Orleans; and should said shipments not reach in any one year the amount hereinbefore mentioned said Fleitas will nevertheless allow and pay to said Shattuck & Hoffman the same amount of commissions as if said shipments had in fact reached the amount hereinbefore provided for.

3. Said Fleitas is at liberty to make a *bona fide* sale of said plantations or either of them at any time after the first day of January, 1886, provided said sale is made after thirty days' notice to said Shattuck & Hoffman, and thus take up and pay off so much of said loan as may be then unpaid; but such payment is only to be made in the months of December, January, or February, and until such payment is made in full said mortgage shall remain in full force and effect and unimpaired by anything herein contained.

4. Notwithstanding said sale may be made or said debt may be paid, said Fleitas will nevertheless ship to said Shattuck and
148 Hoffman all the said crops grown on said plantations in the season next preceding the date of said payment, and said shipments shall not be less than the amount of ($80,000), as hereinbefore mentioned.

5. It is estimated that said Fleitas will need of said loan the sum of ($25,000) to pay his indebtedness to Lehman, Abraham & Co. and

the further sum of ($12,000) to pay off the holders of certain mortgage and lien notes. Tha balance of the net proceeds of said —, say ($24,425), will remain in the hands of said Shattuck & Hoffman, to be drawn against by said Fleitas in monthly instalments of, say, ($3,500), on the first day of each month, from January to July, 1884, inclusive. In addition to this sum of ($3,500), to be drawn on the first or other day in said months, he may, if he shall so deem it —, in any one of said months draw the sum of ($500), but in such case said $500 is to be deducted from the $3,500 to be drawn in the next succeeding month. So long as said balance of $24,425 shall remain in the hands of said Shattuck & Hoffman they will allow said Fleitas interest thereon at 5 *% per cent.* per annum, but as each instalment thereof is drawn by said Fleitas interest on the amount so drawn shall cease.

6. Said Fleitas will, for the benefit of the mortgagee of said mortgage, take out such policies of insurance as may be approved by said mortgagee to the amount of $25,000 *dollars* on his sugar-house — assign them to said mortgagee as may be required and will keep them alive.

7. Said Shattuck & Hoffman will, in accordance with the customs of the merchants of New Orleans, effect insurance upon said
149 sugar and molasses in transit from said plantations to New Orleans and while in warehouse in said city.

8. Said Fleitas will furnish abstract of title to said plantations as may be required by said Shattuck and Hoffman at his own expense.

9. In the event of an overflow from the Mississippi river sufficient to imperil or threaten or actually to destroy the crops of 1884 on said plantations or either of them to a material extent, the monthly instalments of $3,500 each provided for in article fifth hereof will not be drawn for by said Fleitas or paid by said Shattuck & Hoffman.

(S'g'd) SHATTUCK & HOFFMAN.
(S'g'd) F. B. FLEITAS.

Witness:
D. A. KENNEDY.

Stipulation. Filed Aug. 2, 1888.

Circuit Court of the United States, Eastern District of Louisiana.
In Equity.

Mrs. CORINNE WARREN FLEITAS
vs.
WM. F. MELLEN *et al.* } No. 11702.

It is stipulated by and between counsel that the time for
150 answers to amended and supplemental bill- in this cause be extended for such time as the defendants may need, and that

the time for taking proofs in the cause be extended until the 3d Monday in November, 1888.

(Signed) J. R. BECKWITH,
Sol. for Compl't.
W. F. & D. C. MELLEN,
Of Counsel for Def'ts.

Motion and Order: Leave to Make New Parties. Entered and Filed Nov. 19, 1888.

Circuit Court of the United States, Eastern District of Louisiana.

MARY C. FLEITAS
vs.
WM. F. MELLEN *et al.*

On motion of J. R. Beckwith, solicitor for complainant, and on suggesting that since the last term of this court R. B. Pleasants, at that time marshal of this district and as such made a defendant in the bill herein, has departed this life, and that Geo. Moorman has been appointed and qualified as marshal of said district and is at this time in the exercise of said office and is a necessary
151 party to said bill, it is ordered that the complainant be and is given leave to amend the said bill to make the said Moorman a defendant therein, and that E. R. Hunt be appointed special officer to serve process on said Geo. Moorman, marshal.

Supplemental Bill Making Geo. Moorman, Marshal, a Party. Filed Nov. 19, 1888.

Circuit Court of the United States, Eastern District of Louisiana.

Mrs. MARY CORINNE FLEITAS *et al.*
vs.
WM. F. MELLEN *et al.*
No. 11702.

To the honorable the judges of the circuit court of the United States for the eastern district of Louisiana:

By leave of the court first had and obtained Mrs. Mary C. Fleitas, assisted and authorized by her said husband, Francis B. Fleitas, brings this *his* supplemental bill herein against said defendants named in said original and supplemental bill; and thereupon your oratrix shows unto your honors that she, to avoid all repetitions, refers to the said bill amended and supplemental bill and to the record herein for all of the detail thereof, and further shows
152 that since the last term of this court, some time in August, 1888, the said defendant R. B. Pleasants, at that time marshal of the said eastern district of Louisiana, departed this life, and that the said office became and was vacant until some time early in the present month of November, A. D. 1888, when George Moorman was appointed and in some form qualified as marshal of said district and is at this time charg-able with the execution of process

issuing out of this court and has become and is a necessary party defendant herein; that your oratrix asserts, avers, and will maintain each and all of the averments and allegations set forth in the said former bills herein against the said Moorman the same in all respects and particulars as if the same were in all things repeated and reaverred herein.

Wherefore your oratrix makes the said George Moorman defendant herein and prays against him the same relief, interlocutory and final, as she hath heretofore prayed against his said *successor* in office, the said Pleasants, and that process of subpœna in due form may issue herein against the said George Moorman, commanding him to be and appear in this court, on a day certain to be named therein, and then and there on oath true answer make to all and singular the matters and things charged and set forth in said original and amended and supplemental bill of complaint herein and stand to and abide all orders and decrees that may be made in the premises, and for all general and equitable relief in the premises; and will ever pray, &c.

(Signed) J. R. BECKWITH,
Sol. for Complainant.

153 *Pro Confesso. Entered in Chancery Order Book Nov.* 23, 1888.

Circuit Court of the United States, Eastern District of Louisiana.

Mrs. MARY C. FLEITAS
vs.
WM. F. MELLEN *et al.* } No. 11702.

The clerk of the said circuit court will please enter in the common rule book in chancery the following order:

The time allowed by order of court and extended by stipulation within which the defendants, excepting the defendant Pleasants, now dead, and the defendant Moorman, from whom answer is not as yet due, —, and the said defendants not having plead, answered, or demurred to said amended and supplemental bill or to said bill as amended and supplemented, but all in all things in default therein, on motion of J. R. Beckwith, solicitor for complainant, it is ordered that the said bill of complaint as amended and supplemented and said amended and supplemental bill be and is taken as in all things confessed as true by all of said defendants except the said defendant Moorman.

New Orleans, Nov. 23, 1888.

(Signed) J. R. BECKWITH,
Sol. for Complainant.

154 *Agreement of Counsel to Set Aside Pro Confesso. Filed Dec. 5th, 1888.*

United States Circuit Court, Eastern District of Louisiana.

Mrs. CORINNE WARREN FLEITAS
vs.
WM. F. MELLEN *et als.*
No. 11702. In Equity.

It is agreed that the *pro confesso* heretofore entered against defendants for failure to answer the amended and supplemental bill be set aside and that their answers be filed.

(Signed) J. R. BECKWITH,
Sol. for Compl't.
T. J. SEMMES,
W. F. & D. C. MELLEN,
Sol's for Def'ts.

Answer of Gilbert M. Richardson. Filed December 5th, 1888.

United States Circuit Court for the Eastern District of Louisiana.

Mrs. CORINNE FLEITAS, Wife of F. B. Fleitas,
vs.
W. F. MELLEN *et als.*
No. 11702. In Equity.

155 The separate answer of Gilbert M. Richardson to amended and supplemental bill of complaint of Mrs. Mary Corinne Warren Fleitas, wife of F. B. Fleitas, against W. F. Mellen, Gilbert M. Richardson, Shattuck & Hoffman, W. B. Shattuck, and The British & American Mortgage Company (Limited).

That it is true the writ of seizure and sale referred to by the complainant was issued the day before the final adjournment of the April term of this court, but it is not true that the delay was the result of the motive attributed to the defendants by the complainant; that after the court had dissolved the injunction obtained by complainant the mortgage notes held by the defendant Richardson were in New York and an order of seizure and sale could not be obtained upon them until they were sent here to be annexed to the petition, and the time required to obtain them was the cause of the delay in applying to the court for the writ of seizure and sale, and that so far from desiring to obtain any advantage over the complainant after the writ *or* seizure and sale was obtained the said Richardson postponed its execution for nearly six months at the instance and for the accommodation of the complainant and her husband, who professed during all this period to be desirous of settling the claim of said Richardson; that it is true the complainant was in no manner a party to the executory process sued out against her husband, because it was unnecessary that she should be made a party, and

that it is true that the court refused to allow the defendant an appeal from the order granting the executory process, because he was not entitled to it; and whether the complainant has been in
156 possession of the property described in her bill since her alleged purchase at the alleged judicial sale in the suit by her against her husband and whether she has expended large sums of money preparing the land for crops this defendant has no knowledge or information on the subject, except that he believes that the real possessor or real cultivator of the plantation is her husband, not herself, especially as this defendant avers that even if the pretended judgment on which she issued execution and made said pretended sale were valid that the sale itself was void, because it did not realize a sum sufficient to pay the prior mortgage held by this defendant.

This defendant denies the legal proposition asserted in the bill of complaint that the order of seizure and sale obtained by him in this court was issued upon evidence not authentic, either as to the existence of the mortgage or the amount of the debt or in any other respect, and demurs to all the averments of the bill upon that subject as matters with which the complainant has no concern.

This defendant admits the existence of the agreement between Shattuck & Hoffman and the husband of the complainant, dated the 28th of January, 1884, and referred to in complainant's bill of complaint and referred to in the act of mortgage; but he avers that said agreement had no connection whatever with the mortgage debt represented by the notes on which this defendant sued out executory process; that this defendant in the matter of said mortgage was furnished by the British & American Mortgage Company, Limited, with the sum of $63,000, with the request to advance said money and take the mortgage for securing the
157 same in the name of this defendant for its convenience, and that this defendant complied with said request, loaned the money to the husband of the complainant, as specified in the act of mortgage, and on the day of the date of said act of mortgage paid the full amount to him and received from him as consideration therefor all the notes specified in the act of mortgage, and that the notes on which he has obtained in this court executory process against the husband of the defendant are the notes mentioned in said mortgage which remain unpaid; and this defendant avers that all of said sum of $63,000 paid by him to complainant's husband as consideration for the notes referred to in the act of mortgage was, in the months of January and February, 1884, by the directions of the husband of the complainant, appropriated to the payment of his debts, among others the payment of the mortgages upon the two plantations mentioned in the act of mortgage on which this defendant has issued executory process, to wit, $9,000 to Jos. Hernandez, mortgagee of the Corinne plantation, and $35,884.07 to Lehman Abraham & Co., also mortgagees, and also to the payment of some other small debts of the complainant's husband, leaving a balance to his credit on the books of Shattuck & Hoffman of $14,585.93 on the 23rd of February, 1884, and on that date, by

direction of complainant's husband, the said balance was transferred on the books of Shattuck & Hoffman to the credit of a firm styled F. B. Fleitas & Brother, composed of the complainant's husband and his brother, Jackson E. Fleitas, and this respondent is informed and believes that all said balance was subsequently paid out by Messrs. Shattuck & Hoffman to said firm of Fleitas & Brother.

158 This defendant specially denies that he or the British & American Mortgage Company, Limited, was ever a party to any scheme or any arrangement or device for extorting usurious interest from the complainant's husband; that neither he nor the said company was a party to the agreement of the 28th of January, 1884, between Shattuck & Hoffman and the complainant's husband and had and has no interest therein; that the said agreement, whatever may be its character, was entirely an arrangement between Shattuck & Hoffman and the complainant's husband, but this defendant is informed and believes that said agreement was perfectly honest and legitimate and is free from any imputation of extortion or scheme to extort usurious interest.

This respondent denies that the mortgage notes mentioned in the mortgage of the 28th of January, 1884, represented future advances in whole or in part so far as this defendant and the British & American Mortgage Company, Limited, are concerned; that the whole amount of money represented by said notes, to wit, $63,000, was actually paid to said Fleitas in cash as the consideration of said notes by this defendant on account of the British & American Mortgage Company, Limited.

This defendant does not propose in this answer to enter into any discussion as to the nature or character of the proceeding for executory process instituted by him in this court, whether it be a common law or an equity proceeding or whether it is warranted by any act of Congress or otherwise. These considerations are matters of law which have been submitted to the court and have been acted on. This defendant also specially denies that

159 the transactions between him or the British & American Mortgage Company, Limited, or Shattuck & Hoffman, so far as the complainant or her husband are concerned, were clandestine or secret, and that so far from that being the truth the complainant in her bill of complaint shows the transactions were reduced to writing, which writing has always been in the possession of her husband, and he believes she has known the character and nature of the transactions as set forth in said agreement from the time that it took place until the filing of this amended bill.

This defendant, further answering, refers to and adopts the answer heretofore filed in his behalf to the original bill in this cause.

(Signed) GILBERT M. RICHARDSON.

STATE OF NEW YORK, } ss:
City of New York, }

Before the undersigned authority personally came the within-named Gilbert M. Richardson, and, being by me first duly sworn,

says that all the matters and things of the foregoing answer are true in substance and in fact.

Sworn to and subscribed before me this first day of December, 1885.

[L. S.] (Signed) A. H. NONES,
Commissioner of the State of Louisiana for New York.

(Signed) T. J. SEMMES,
W. F. & D. C. MELLEN,
Sol'rs for Defendant.

160 *Answer of W. B. Shattuck. Filed Dec. 5th, 1888.*

United States Circuit Court for the Eastern Dist. of Louisiana. In Equity.

Mrs. MARY CORINNE FLEITAS, Wife of F. B. Fleitas,
vs.
W. F. MELLEN *et als.*
} No. 11702.

The separate answer of Wm. B. Shattuck to the amended and supplemental bill of complaint of Mary Corinne Warren Fleitas against W. F. Mellen and others.

This defendant refers to and adopts as his answer the separate answer of Gilbert M. Richardson sworn to on the first day of December, 1888, and for further answer says that he denies any participation in or existence of any secret scheme or device or arrangement with Shattuck & Hoffman or the defendant Richardson or any one else to extort money from or to obtain usurious interest from the complainant's husband; that he is now and has been for several years the managing director of the British & American Mortgage Company, Limited, in this country, and as such he furnished the credit to Gilbert M. Richardson of $63,000, whereby the said Richardson was enabled to pay to the complainant's husband the amount for which complainant's husband executed and delivered the notes specified in the act of mortgage on which the said Richardson is now proceeding in this court by way of executory process; that said sum of $63,000 was a *bona fide* loan in actual cash, and the only
161 consideration received for the same by the defendant Richardson or the British & American Mortgage Company, Limited, for whose convenience said Richardson was acting at the time, was the notes specified in the said act of mortgage. He makes this answer the answer of the British & American Mortgage Company, Limited, and of himself individually to said amended and supplemental bill of the complainant.

(Signed) WM. B. SHATTUCK.

STATE OF NEW YORK, *City of New York,* } *ss:*

Before the undersigned authority personally came the withinnamed Wm. B. Shattuck, and, being by me first duly sworn, says

that all of the matters and things of the foregoing answer are true in substance and in fact, and that as managing director of the said Mortgage Company, Limited, for the United States of America he is duly authorized to appear and make answer therefor.

Sworn to and subscribed before me this 1st day of December, 1888.

[L. S.] (Signed) A. H. NONES,
Commissioner of the State of Louisiana for New York.

(Signed) J. J. SEMMES,
W. F. & D. C. MELLEN,
Solicitors for Defendants.

Answer of Shattuck & Hoffman and of A. R. Shattuck & F. B. Hoffman. Filed Dec. 5th, 1888.

162 United States Circuit Court for the Eastern District of Louisiana. In Equity.

Mrs. MARY CORINNE FLEITAS, Wife of F. B. Fleitas,
vs.
W. F. MELLEN *et als.*
} No. 11702.

The separate answer of the commercial firm of Shattuck & Hoffman and of A. R. Shattuck, F. B. Hoffman, to the amended bill of complaint of Mary Corinne Warren Fleitas against W. F. Mellen and others.

These defendants refer to and adopt as their answer the separate answer of Gilbert M. Richardson sworn to in New York on 1 Dec'r, 1888, and filed in this case on the — day ——, 1888, and for further answer they separately deny any secret scheme or device or arrangement entered into between them or either of them with the defendant Richardson or the British & American Mortgage Company, Limited, or W. B. Shattuck or any one else to extort money from or to obtain usurious interest from the complainant's husband, or that the transactions between them and him were concealed with design of extortion; that all their transactions have been entered on the books of Shattuck & Hoffman openly or reduced to writing by agreements made with the complainant's husband, of which he had duplicates; that on the day of the execution of the mortgage referred to in the amended bill of complaint they, by the direction of G. M. Richardson, paid to F. B. Fleitas $63,000 in cash and carried the same to his credit on their books; that subsequently, in the months of January and February, 1884, by the directions of the complainant's husband and pursuant to the stipu-
163 lations contained in the written agreement of January 28th, 1884, referred to in the amended bill of complaint, they paid for account of said Fleitas $9,000 to Jos. Hernandez, a mortgage creditor on one of the plantations mentioned in the mortgage; $35,884.70 to Lehman, Abraham & Co., a mortgage creditor whose mortgage covered both plantations, and made other payments of smaller sums,

which reduced the said sum of $63,000 to $14,585.93 to the credit of the complainant's husband on the 23rd of February, 1884; that on that day, by his directions, they transferred said balance of $14,585.93 from his account to the credit of the account of F. B. Fleitas & Brother, a partnership composed of the complainant's husband and his brother, Jackson E. Fleitas, and that thereafter said balance was paid out from time to time by the directions of said firm; that subsequently other advances were made to complainant's husband by virtue of other agreements, and among them two special agreements, one dated the 21st of January, 1885, and the other the 31st of March, 1886; and these respondents annex hereto an account of all their dealings with said Fleitas since the 23rd of January, 1884, together with copies of the written agreements which they have made with him, and submit them as a full and complete answer to the information sought from them by the amended bill of complaint; and these defendants expressly aver that they had no interest whatever in the mortgage executed in favor of Gilbert M. Richardson for the purpose of securing the said sum of $63,000, and that they never had any such interest; and this respondent further avers that neither Gilbert M. Richardson, the mortgagee, nor W. B. Shattuck nor the British & American Mortgage Company,
164 Limited, had or has any interest whatever in the transactions between these defendants and the complainant's husband, as represented in the accounts and agreements herewith filed. These defendants further aver that the accounts, copies of which are herewith filed, with F. B. Fleitas and F. B. Fleitas & Brother have been from time to time as accounts current submitted to the complainant's husband and to the firm of F. B. Fleitas & Brother, and that they have been from time to time approved, and that the amended bill of complaint is the first intimation which the defendants have received which would lead them to believe that the accounts were objected to by the complainant's husband or by F. B. Fleitas & Brother, and that if there be any usury in the transactions contained in said accounts it is more than offset by the balance still due to these respondents by said F. B. Fleitas and F. B. Fleitas & Brother, and at all events any claim for reimbursement is barred by the prescription of one year.

(Signed) A. R. SHATTUCK.
F. B. HOFFMAN.

(Signed) T. J. SEMMES,
W. F. & D. C. MELLEN,
Sol'rs for Defendants.

STATE OF LOUISIANA, }
Parish of Orleans. }

Before the undersigned authority personally came the within-named A. R. Shattuck and F. B. Hoffman, and, being by me first duly sworn, severally say that all the matters and things of the foregoing answer are true in substance and in fact.

(Signed) A. R. SHATTUCK.
F. B. HOFFMAN.

Sworn to and subscribed before me this fourth day of ——, 1888.
[L. S.] (Signed) BENJAMIN ORY, *Not. Pub.*

165 4 EXHIBITS. Filed with Answer of Shattuck & Hoffman Dec. 5th, 1888.

This memorandum of agreement made this 28th day of January, 1884, by and between the commercial firm of Shattuck & Hoffman, of New Orleans, Louisiana, of the first part, and F. B. Fleitas, of St. Bernard parish, of the second part, witnesseth:

1. Said Shattuck & Hoffman will, as agents for said Fleitas, undertake to negotiate for said Fleitas a loan of sixty-three thousand dollars, payable one-fifth annually on the first day of January (fixed), 1885, 1886, 1887, 1888, 1889, respectively, with interest at eight per cent. per annum from date of loan annually as it accrues, said interest to be represented and evidenced by coupon or interest notes. Said loan is to be secured by a first mortgage on the Corinne and Myrtle Grove plantations of said Fleitas, in St. Bernard parish, Louisiana.

2. In consideration of the premises said Fleitas will allow and pay to said Shattuck & Hoffman an amount equal to two and one-half (2½ %) per cent. of said sum of $63,000 as commissions, and he, moreover, obligates himself to said Shattuck & Hoffman, their assigns and successors, to ship all the crops of sugar and molasses grown or controlled by him during the continuance of said loan and mortgage for sale by said Shattuck & Hoffman on arrival, at their option, for account of said Fleitas, and that his said shipments shall be such that the gross proceeds of the sale thereof shall in no year be less than eighty thousand dollars ($80,000). For the handling of said sugar and molasses and the sale thereof said
166 Fleitas will allow and pay to said Shattuck & Hoffman a commission of two and one-half per cent. (2½ %) on sales and all the ordinary and usual charges incidental to such business established by the customs of merchants in New Orleans, and should said shipments not reach in any one year the amount hereinbefore mentioned said Fleitas will, nevertheless, allow and pay to said Shattuck & Hoffman the same amount of commissions as if said shipments had in fact reached the amount hereinbefore provided for.

3. Said Fleitas is at liberty to make a *bona fide* sale of said plantations or either of them at any time after the first day of January, 1886, provided said sale is made after thirty days' notice to said Shattuck & Hoffman, and thus take up and pay off so much of said loan as may be then unpaid; but such payment is only to be made in the months of December, January, or February; and until such payment is made in full, said mortgage shall remain in full force and effect and unimpaired by anything herein contained.

4. Notwithstanding said sale may be made or said debt may be paid, said Fleitas will, nevertheless, ship to said Shattuck & Hoffman all the said crops grown on said plantations in the season next preceding the date of said payment, and said shipments shall not be less than the amount of $80,000 as heretofore mentioned.

5. It is estimated that said Fleitas will need of said loan the sum of $25,000 to — his indebtedness to Lehman Abraham & Co. and the further sum of $12,000 to pay off the holders of certain mortgages and lien notes. The balance of the net proceeds of said loan, say $24,425, will remain in the hands of said Shattuck & Hoffman, to be drawn against by said Fleitas in monthly instalments of,
167 say, $3,500 on the first day of each month from January to July, 1884, inclusive. In addition to this sum of $3,500 to be drawn on the first or other day in said months, he may, if he shall so deem it —, in any one of said months draw the sum of $500, but in such case said $500 is to be deducted from the $3,500 to be drawn in the next succeeding month. So long as said balance of $24,425 shall remain in the hands of said Shattuck & Hoffman they will allow said Fleitas interest thereon at 5 % per annum, but as each instalment thereof is drawn by said Fleitas interest on the amount so drawn shall cease.

6. Said Fleitas will, for the benefit of the mortgagee of said mortgage, take out such policies of insurance as may be approved by said mortgagee to the amount of $25,000 on his sugar house, assign them to said mortgagee as may be required, and will keep them alive.

7. Said Shattuck & Hoffman will, in accordance with the customs of the merchants of New Orleans, effect insurance upon said sugar and molasses in transit from said plantations to New Orleans and while in warehouse in said city.

8. Said Fleitas will furnish abstract of title to said plantations as may be required by said Shattuck & Hoffman at his own expense.

9. In the event of an overflow from the Mississippi river sufficient to imperil or threaten or actually destroy the crops of 1888 on said plantations or either of them to a material extent, the monthly instalments of $3,500 each drawn for in article fifth hereof will not be drawn for by said Fleitas or paid by said
168 Shattuck & Hoffman.

(Signed) F. B. FLEITAS.
SHATTUCK & HOFFMAN.

Witness:
D. A. KENNEDY.

This memorandum of agreement made this 21st day — January, A. D. 1885, by and between the commercial firm of Shattuck and Hoffman, of New Orleans, La., of the first part, and Francis B. Fleitas, of St. Bernard parish, La., of the second part, witnesseth:

1st. Said Shattuck & Hoffman will advance to said Fleitas so much money as they can obtain by the discount of the note of said Fleitas and his mother, Mrs. Marie M. D. Fleitas, for sixteen thousand ($16,000) dollars *in solido*, payable at the Louisiana National Bank of New Orleans, La., to the order of said Shattuck & Hoffman and due on the first day of December, 1885; said discount, however, to net not less than $14,480. The said advance of money is to enable said F. B. Fleitas to cultivate crops of sugar and mo-

lasses on his Corinne & Myrtle Grove plantations in St. Bernard parish in the current year A. D. 1885.

2nd. The net sum aforesaid is to be subject to the drafts of said Fleitas as follows, to wit: $2,300 in each of the months of February and March, $2,400 in April, and the rest in four equal instalments in May, June, July, and August, but he shall have the privilege of overdrawing any of the monthly instalments (except that of August) to the amount of $500—that is to say, he may overdraw the amount specified for February ($2,300) to the amount of $500, and so for the other months, except for August; provided, how-
169 ever, the amount overdrawn in any one month shall be a charge against and deducted from the instalment of the next ensuing month. There shall be no overdraft in August.

3rd. If said Shattuck & Hoffman shall at any time be of the opinion that from overflows, breaking levees, or other cause whatsoever the crops on said plantations or either of them are imperiled, or that the prospects of making and gathering said crops are unfavorable, they shall have the right at their option to refuse payment of any of the drafts hereinbefore provided for or all of them, should they so determine.

4. To secure said advances as evidenced by said note said Fleitas will execute a notarial act of mortgage on said Corinne & Myrtle Grove plantations in favor of said Shattuck & Hoffman, which shall be second or junior to no other mortgage on said plantations or either of them, except the mortgage of Jan'y 28, '84, to G. M. Richardson, recorded in Mortgage Book "12," pp. 80–87, of the mortgage records of St. Bernard parish; and it shall contain provisions for a first lien and privilege on all the crops to be grown on both said plantations in the current year 1885; and said Fleitas obligates himself to Shattuck & Hoffman not to make any contract whereby he shall place on said crops any lien or privilege concurrent with theirs for advances of money or supplies. As additional security for said notes, said Fleitas will obtain from his mother a deed of trust for the benefit of said Shattuck & Hoffman on the property in Mississippi described in the trust deed from Mrs. Fleitas to W. A. Bres, trustee for Shattuck & Hoffman, dated May 14, '84, and
170 recorded in Book No. 20, pp. 76–78, of deed records of Harrison county, Mississippi, and the said deed of trust shall be a first lien or incumbrance on said Mississippi property. Said Fleitas will also make a bill of sale of fifty mules to said Shattuck & Hoffman and will deliver the mules accordingly.

5th. In consideration of the premises said Fleitas obligates himself to send to Shattuck & Hoffman, their successors and assigns, all the crops of sugar and molasses grown or controlled by him in the season of 1885–'86, for sale by said Shattuck & Hoffman, as his factors & commission merchants, on arrival, at their option, for account of said Fleitas, and that his said shipment shall be such as to produce not less than $80,000 when sold. Said Fleitas will allow and pay to said Shattuck & Hoffman for handling and selling said sugar and molasses a commission of two and one-half per centum ($2\frac{1}{2}$ %) on gross sales thereof and all ordinary and usual charges in-

cident to such business as established by custom of merchants in New Orleans. Should said shipments not reach in the season 1885–'86 the amount mentioned said Fleitas will nevertheless allow and pay to said Shattuck & Hoffman the same aggregate of commissions—say $2,000—as if said sale had in fact reached the amount ($80,000) before mentioned.

6th. Said Shattuck & Hoffman will, in accordance with the custom of merchants in New Orleans, effect insurance on said shipments of sugar and molasses while in transit from said plantations to New Orleans and while in warehouse in said city, but at the expense of said F. B. Fleitas.

7th. The abstract- of said plantations are to be brought
171 down to date at the expense of said Fleitas.

8th. Against shipments of sugar and molasses said Fleitas will not draw except as limited as follows: No drafts at all against shipments of molasses and not exceeding two (2) cents per pound against sugar until all notes becoming due to G. M. Richardson in season of 1885–'86 are paid, and until the final payment of all moneys due said Shattuck & Hoffman, or to become due to them, in the season 1885–'86.

9th. This agreement is not to be construed as revoking or annulling the agreement of Jan'y 28, '84, between the same parties, but said agreement is to remain in force, except in those points in which it is modified by this agreement for the season 1885–'86.

Witness the hands of the parties hereto this 21st day of January, A. D. 1885.

(Signed) F. B. FLEITAS.
SHATTUCK & HOFFMAN.

NEW ORLEANS, *Feb'y 26th*, 1885.

We undertake to carry out the above agreement the same as if we were parties to it.

(Signed) F. B. FLEITAS & BRO.

This memorandum of agreement, made the 31st day of March, A. D. 1886, by and between the commercial firm of Shattuck & Hoffman, of New Orleans, La., of the first part, and Francis
172 B. Fleitas, of St. Bernard parish, La., of the second part, witnesseth :

1st. Said Shattuck & Hoffman will negotiate for the said Fleitas a loan of so much money as they can obtain for the discount of the note of said Fleitas and his mother, Mrs. Mary M. D. Fleitas, for $17,700, payable at the Louisiana National Bank of New Orleans, La., in gold coin, and due on the 1st day of December, A. D. 1886; said notes, however, to net not less than $16,393.84. Said loan is to enable the said Fleitas to cultivate the crops of sugar and molasses on his Corinne and Myrtle Grove plantations, in St. Bernard parish, in the current year A. D. 1886.

2nd. The net sum aforesaid is to be placed to the credit of said Fleitas with said Shattuck and Hoffman, and is to be disposed of as follows:

$6,735.19 is to go to pay said Shattuck & Hoffman the balance found on examination to be due them on open ac; $2,000 is to be paid to Gilbert M. Richardson in part payment of said Fleitas' mortgage note for $12,600, due Jan'y 1, '86.

$1,800 is to be drawn by said Fleitas during April next.

1,500	do.	May "
1,500	do.	June "
1,500	do.	July "
1,357.65	do.	August "

3rd. If said Shattuck & Hoffman shall at any time be of the opinion that from overflow, breaking of levees, or other cause whatsoever the crop on said plantations or either of them is imperiled, or that the prospects of making and gathering said crops are unfavorable, they shall have the right, at their option, to refuse payment
173 of any of the drafts hereinbefore provided for, or all of them should they so determine.

4th. To secure said advances, as evidenced by said note, said Fleitas will execute a notarial act of mortgage on said "Corinne" and "Myrtle Grove" plantations in favor of said Shattuck & Hoffman, which shall be second or junior to no other mortgage on said plantations or either of them, except the mortgage of Jan'y 28, '84, to G. M. Richardson, recorded in Mortgage Book 12, pp. 80–87, of the mortgage records of St. Bernard parish, and it shall contain provisions for a first lien and privilege on all the crops to be grown on both said plantations in the current year 1886; and said Fleitas obligates himself to said Shattuck & Hoffman not to make any contract whereby he shall place on said crops any lien or privilege concurrent with theirs for advances of moneys or supplies. As additional security for said note said Fleitas will obtain from his mother a deed of trust, for the benefit of said Shattuck & Hoffman, on the property in Mississippi described in the trust deed from Mrs. Fleitas to W. A. Bres, trustee for Shattuck & Hoffman, dated May 14, '84, and recorded in Book No. 20, pp. 76–78, of deed records of Harrison county, Mississippi, and the said deed of trust shall be a first lien or incumbrance on said Mississippi property. Said Fleitas will also make a bill of sale of 50 mules to said Shattuck & Hoffman, and will deliver the mules accordingly.

5th. In consideration of the premises said Fleitas obligates himself to send to said Shattuck & Hoffman, their successors or assigns, all the crops of sugar and molasses grown or controlled by
174 him in the season of 1886–'87 for sale by said Shattuck & Hoffman as his factors & commission merchants on arrival, at their option, for account of said Fleitas, and that his said shipments shall be such as to produce not less than $80,000 when sold. Said Fleitas will allow and pay to said Shattuck & Hoffman for handling and selling said sugar and molasses a commission of two and one-half per centum (2½%) on gross sales thereof and all ordinary and usual charges incident to such business as established by the custom of merchants in New Orleans. Should said shipments not reach in the season 1886–'87 the amount mentioned, said Fleitas will nevertheless allow and pay to said Shattuck & Hoffman the same

aggregate of commissions, say $2,000, as if said sales had in fact reached the amount ($80,000) before mentioned.

Sixth. Said Shattuck & Hoffman will, in accordance with the custom of merchants of New Orleans, effect insurance on said shipments of sugar and molasses while in transit from said plantation to New Orleans and while in warehouse in said city, but at the expense of said Fleitas.

7th. The abstracts of said plantations are to be brought down to date at the expense of said Fleitas.

8th. Against shipments of sugar and molasses said Fleitas will not draw except as limited as follows: No drafts at all against shipments of molasses, and not exceeding two (2) cents a pound against sugar until all notes becoming due to G. M. Richardson in season 1886–'87 are paid, and until the final payment of all moneys due said Shattuck & Hoffman or to become due to them in the season 1886–'87, and until the payment of the loan herein provided for.

175 9th. This agreement is not to be construed as revoking or annulling the agreement of Jan'y 28, '84, between the same parties, but said agreement is to remain in force, except in those points in which it is modified by this agreement for the season 1886–'87.

Witness the hands of the parties hereto this 31st day of March, A. D. 1886.

(Signed) F. B. FLEITAS.
SHATTUCK & HOFFMAN.

Witness:
WALTER DUNSTAN.

NEW ORLEANS, *March 31st*, 1886.

We undertake to carry out the above argreement the same as if we were parties to it.

(Signed) F. B. FLEITAS & BRO.

177 Dr. F. B. F. Fleitas in account with Shattuck and Hoffman. Cr. 178

1884.				1884.	
Jan'y 28.	To com'ns, 2½ % on $63,000		1,575 00	Jan. 28. By G. M. Richardson	63,000 00
	" " cash, J. Hernandez		9,000 00		
	" " " Lehman, Abraham & Co.		35,884 07		
Feb'y 1.	" " J. E. Fleitas		450 00		
6.	" " "		1,500 00		
8.	" " copy of mortgage		5 00		
23.	" F. B. Fleitas & Bro., bal. tran'f'd		14,585 93		
			63,000,00		63,000 00

F. B. Fleitas & Bro.

1884.				1884.	
Feb'y 23.	To cash, J. E. Fleitas		1,000 00	Feb'y 23. By F. B. Fleitas, bal. transf's	14,585 93
29.	"		1,000 00	May 22. " bills rec., note due Dec. 1, '84	7,000 00
M'ch 3.	"		1,000 00	June 9. " int. ac., 5 % on Cr. bal'es of loan, $63,000	155 96
8.	"		1,000 00		
14.	"		500 00		
24.	"		500 00		
28.	"		500 00		
Ap'l 4.	" "		1,000 00		
8.	" " E. E. Nunez, tax-bill		566 50		
12.	" " J. E. Fleitas		1,000 00		
19.	" "		500 00		
26.	" "		500 00		
May 2.	" "		1,000 00		
9.	" "		1,000 00		
16.	" "		1,000 00		
22.	" int. on bills r., $7,000, May 22 Dec. 1, '84		300 22		
"	" com'n ac., 2½ % on $7,000		175 00		
31.	" cash, J. E. Fleitas		1,000 00		
June 2.	" " cl'k Harrison Co., Miss.		2 00		
5.	" " J. E. Fleitas		1,500 00		
6.	" " cash		300 00		
10.	" L. & L. & G. Ins. Co., prem.		80 00		
14.	" cash, J. E. Fleitas		500 00		
20.	" " "		300 00		
27.	" " "		300 00		
179					180
July 1.	To cash, M. C. Randal		69 47		
5.	" " J. E. Fleitas		425 00		
9.	" " Le Breton & Villars		441 85		

Account Annexed to the Answer of Shattuck & Hoffman—Continued.

1884.							
July	11.	To cash, J. E. Fleitas	300 00				
"	"	" balance down	3,981 85				
			21,741 89				21,741 89
July	18.	To cash, J. E. Fleitas	250 00	July	11.	By balance ac. rend.	3,981 85
	25.	" " "	175 00	Oct.	8.	" cash of J. E. Fleitas	15 00
Aug.	1.	" " "	300 00		30.	" net proceeds 28 B. M	398 76
	7.	" " F. B. Fleitas	60 00		"	159 B. S.	2,483 17
	8.	" " J. E. Fleitas	275 00	Nov.	11.	181 B. M	2,235 26
	15.	" " "	300 00		"	226 B. S.	3,471 15
	27.	" " "	500 00		12.	28 B. M	204 55
	30.	" " express on casting	2 95		"	71 B. S.	1,090 91
Sept.	6.	" " J. E. Fleitas	500 00		15.	47 "	695 61
	12.	" " "	500 00		18.	42 "	616 04
	20.	" " "	500 00		25.	234 B. M	1,987 57
Oct.	3.	" " "	600 00		"	430 B. S.	6,068 98
	11.	" " "	350 00		26.	58 "	786 10
	13.	" invoice rend	32 28		"	26 B. M	220 55
	16.	" cash, London & L. & G. Ins. Co	750 00		28.	88 B. S	1,224 83
	20.	" ins. ac. on sugar, $12,000 @ 1 %	120 00		"	57 B. M	442 58
	24.	" cash, A. M. & J. Solari	96 65	Dec.	9.	126 "	942 64
	25.	" " J. E. Fleitas	750 00		10.	76 "	537 39
	30.	" " bearer	250 00		"	326 B. S.	4,481 31
	31.	" " express on valves	2 00		11.	75 "	1,071 96
Nov.	1.	" " J. E. Fleitas	600 00		"	59 B. M	441 88
	"	" " Geo. Cade	50 00		20.	176 "	1,343 18
	7.	" " J. E. Fleitas	600 00		"	363 B. S.	5,160 28
	12.	" " P. Hirsch, 1 bbl	1 00		23.	23 "	316 53
	14.	" " M. Poporich	31 90		30.	67 B. M.	526 06
	"	" " J. L. Boutte	50 00		"	177 B. S.	2,585 24
	"	" " B. Beans	300 00	1885.			
	15.	" " J. E. Fleitas	1,000 00	Jan'y	7.	520 "	7,620 54
	17.	" " F. B. Fleitas	2,800 00		"	222 B. M	1,606 49
	"	" " J. G. Clarke	88 10				

181 Dr. **F. B. Fleitas & Bro. in account with Shattuck & Hoffman.** Cr. 182

1884.		To am't bro't forward	26,589 34			By am't bro't forward	52,556 35
Dec.	3.	" cash, bills payable	139 78				
"	"	" J. E. Fleitas	200 00				
"	"	" Wallace & Vanhorn	121 42				
"	"	" Geo. Heck & Co.	94 93				
	4.	" " Stauffer, McCready & Co.	281 32				
	8.	" " J. E. Fleitas	300 00				
"	"	" bills payable	1,253 59				
"	"	" G. W. Gadberry	125 00				

	"	"	" H. D. Coleman	109 45
	10.	"	" Margaret Price	70 00
	11.	"	"	50 00
	"	"	" B. Biane	300 00
	13.	"	" J. E. Fleitas	450 00
	"	"	" changing 6 B. M.	6 00
	15.	"	" B. Biane	300 00
	17.	"	" bills payable	311 00
	20.	"	" F. B. Fleitas	250 00
	22.	"	ins. ac., $1,000 @ 5-16	31 25
	23.	"	cash, bills payable	95 00
	24.	"	" Leon Godchaux	45 00
	"	"	" Geo. Godberry	100 00
	26.	"	" J. Dare	50 00
	"	"	" J. E. Fleitas	500 00
	"	"	" Lewis Holman	100 00
	"	"	" Jno. Thowalter	56 00
	"	"	" Harry Haotie	67 00
	27.	"	" bearer	2,500 00
	"	"	" Jno. Johnson	70 00
	29.	"	"	2,500 00
	31.	"	int. ac. on Dr. balance	6 02
1885.				
Jan'y	1.	"	B. & A. M. Co., L't'd, note due Jan'y 1, '85	12,600 00
	2.	"	cash, F. B. Fleitas	610 15
	5.	"	"	40 00
	6.	"	" Patton & Benedict	106 89
	"	"	" Wallace & Vanhorn	56 17
	7.	"	balance down	2,071 04
				$52,556 35

				$52,556 35

183

184

Nov.	19.	To cash, J. H. Hanna		178 61
	20.	"	" E. E. Nunez, taxes	500 00
	"	"	" H'y Lesage	375 0
	"	Disct. B. & A. M. Co. Lt., 6 coupon, due Jan'y 1, '85		4,732 00
	21.	To cash, Red River & Coast Line		265 25
	"	"	" F. B. Fleitas	34 00
	22.	"	" J. E. Fleitas	500 00
	24.	"	" R. W. Elliott, drayage	50
	25.	"	" L. F. Holman	100 00
	26.	" cash		50 00
	27.	" bills rec., note due Dec. 1, '84		7,000 00
	29.	" cash, F. B Fleitas		400 00
	"	"	" Leeds & Co.	250 00
	"	"	" B. Biane	300 00
	"	"	" Mrs. P. Pierre or Beam	70 00
				28,589 34

	52,556 35

Account Annexed to the Answer of Shattuck & Hoffman—Continued.

185

1885.			
Jan'y 7.	To cash,	B. Biame	300 00
9.	" "	F. B. Fleitas	850 00
10.	" "	B. Biame	300 00
"	" "	P. Hirsch, 5 bbls	5 00
12.	" "	J. L. Boutte	150 00
"	" "	Jas. Dare	140 00
		Am't carried forward	1,745
Jan'y 22.	To am't brought forward		1,745 00
"	" cash, G. L. Godberry		96 00
"	" " F. B. Fleitas		500 00
24.	" sugar, def'cy com'n, 2½ on 27,327.97		683 19
26.	" cash, F. B. Fleitas		100 00
"	" " cl'k Harrison Co., Miss		3 00
12.	" " F. B. Fleitas		75 00
29.	" "		25 00
31.	" " cl'k St. Bernard par		10 00
"	" " Nov. 17, '84, exps. on 2 bks artichoke		5 00
Feb'y 2.	" " F. B. Fleitas		2,000 00
4.	" " Sterns Fert. Co		600 00
"	" " cl'k St. Bernard par		5 75
10.	" " P. Hirsch, chg. bbls		2 00
"	" " Benj. Ory, notary		12 00
13.	" " F. B. Fleitas		150 00
"	" " balance down		11,237 12
			17,249 06

186

1885.		
Jan'y 7.	By balance ac. rend	2,071 04
10.	" net proceeds 96 B. M	694 47
	Am't carried forward	2,765 51
	By am't bro't forward	2,765 51
Feb'y 9.	" F. B. Fleitas, s. d. transf'd	14,483 55
		17,249 06

Dr. F. B. Fleitas. Cr.

1885.			
Feb'y 9.	To int. on B. R		1,516 45
"	" F. B. Fleitas & Bro		14,483 55
			16,000 00

1885.		
Feb'y 9.	By B. R. note	16,000 00
		16,000 00

187 Dr. F. B. Fleitas & Bro. Cr. 188

1885.			
Feb'y 16.	To cash,	Patton & Benedict	68 00
"	" "	McCloskey & H	104 93
20.	" "	J. E. Fleitas	400 00

1885.		
Feb'y 13.	By balance ac. rend	11,237 12

	"	"	" W. E. Erwin	50 00
	25.	"	" W. D. Stephens, ag't	99 62
	26.	"	" J. H. Duggan	220 00
M'ch	2.	"	" J. E. Fleitas	150 00
	3.	"	" Ulteider & Co	250 00
	5.	"	" Margaret Pierce	47 40
	6.	"	" Anderson Dobbs	70 88
	"	"	" J. E. Fleitas	500 00
	"	"	" J. M. Frowenfeld	81 37
	"	"	" A. M. & J. Solari	51 12
	"	"	" Crescent City Ice Co	83 75
	"	"	" Wallace & Vanhorn	110 94
			Am't carried forward	2,288 01
			Am't bro't forward	2,288 01
Feb'y	9.	To cash,	R. Frotscher & Co	192 90
	10.	"	" L. & L. & G. Ins. Co. on fert'l'z's	17 50
	13.	"	" F. B. Fleitas	250 00
	14.	"	" Geo. Code	22 25
	16.	"	" error in paym't d'ft Frowenfeld	50
	20.	"	" J. E. Fleitas	575 00
	27.	"	" "	200 00
	"	"	" Wallace & Vanhorn	260 78
	"	"	" F. B. Fleitas	100 00
Ap'l	4.	"	" J. E. Fleitas	650 00
	6.		Balance down	6,680 18
				11,237 12

			Am't carried forward	11,237 12
			By am't bro't forward	11,237 12
				11,237 12

189

F. B. Fleitas & Bro. in account with Shattuck & Hoffman.

190

Ap'l	10.	To cash,	F. B. F. & Bro.	200 00
	17.	"	" J. E. Fleitas	750 00
	"	"	" B. Binaure	185 00
	23.	"	" J. T. Gibbons	106 23
	"	"	" Wallace & Vanhorn	55 38
	"	"	" Stauffer, McC. & Co	50 91
	25.	"	" F. B. Fleitas	175 00
	"	"	" G. R. Finlay & Co	33 45
May	1.	"	" J. E. Fleitas	500 00
	"	"	" W. G. Henry	98 79
	4.	"	" F. B. Fleitas	300 00
	8.	"	" Jas. Wilkinson	100 00
	11.	"	" F. B. Fleitas	70 00
	12.	"	" E. E. Nunez, sheriff	600 00
	"	"	" F. B. Fleitas	40 00
	"	"	" Benj. Dry	50
	15.	"	" J. E. Fleitas	675 00
	29.	"	" "	400 00

Ap'l	6.	By balance ac. rend		6,680 18

Account Annexed to the Answer of Shattuck & Hoffman—Continued.

1885.				1885.		
May	29.	To cash, F. B. Fleitas	25 00			
June	5.	" " "	350 00			
	11.	" " J. H. Duggan	226 00			
	12.	" " Lambon & Noel	27 40			
	13.	" " J. E. Fleitas	380 00			
	15.	" " M. Dowling	67 86			
	18.	" " F. B. Fleitas	30 00			
	19.	" " J. E. "	250 00			
	24.	" " F. B. "	168 74			
	30.	" " M. C. Randal, ag't	62 37			
		" " int. ac. on Dr. balances	14 50			
July	3.	" cash, J. E. Fleitas	700 00			
	6.	" Paul Douilhurt	25 00			
			6,667 14			6,680 18

191 F. B. Fleitas & Bro. in account with Shattuck & Hoffman. 192

1885.				1885.		
		To am't bro't forward	6,667 13		By am't bro't forward	6,680 18
July	6.	" cash, F. B. Fleitas	100 00		Balance down	2,923 23
	10.	" " Boston Club	53 10			
	9.	" " J. H. Duggan	140 00			
	11.	" " F. B. Fleitas	150 00			
	17.	" " J. E. Fleitas	350 00			
	27.	" " Jas. Wilkinson	264 63			
Aug.	1.	" " J. E. Fleitas	700 00			
	"	" " F. B. "	175 00			
	4.	" " M. Dowling	341 28			
	"	" " L. Myers	26 48			
	6.	" " Lambon & Noel	17 28			
	15.	" " J. E. Fleitas	450 00			
	"	" " Lambon & Noel	25 48			
	17.	" " F. B. Fleitas	25 00			
	25.	" " B. J. West & Son	17 15			
	"	" " Stauffer, McC. & Co.	56 31			
Sept.	2.	" " A. A. Greenwood	26 95			
	3.	" " A. M. & J. Solari	37 62			
	7.	" " F. B. Fleitas	40 00			
			9,603 41			9,603 41
Sept.	7.	To balance ac. rend	2,923 23	Nov.	10. By net proceeds 196 B. M	2,716 98
	10.	" cash, J. E. Fleitas	350 00		" " " " 219 B. S	3,703 30
	16.	" " Holloway & Gardes	192 70		" " " " 4 B. M	45 00
	18.	" " Lewis Copping	14 55		" " " " 86 B. S	1,374 21

	19.	"	"	F. B. Fleitas	100 00
	25.	"	"	J. E. "	200 00
	26.	"	"	F. B. "	200 00
	30.	"	"	express on p'k'ge	1 35
Oct.	8.	"	"	F. B. Fleitas	125 00
	9.	"	"	J. E. "	325 00
	13.	"	"	" "	25 00
	16.	"	"	F. B. Fleitas	525 00
	23.	"	"	Fairbanks & Co.	20 00
	26.	"	"	F. B. Fleitas	600 00
	31.	"	"	J. I. Warren	400 00
	"	"	"	H'y Lasage, 200 M. bbles	240 00

193

Nov.	2.	To cash,		Ins. Oil Tank Co.	63 54
	3.	"	"	J. J. Warren	400 00
	4.	"	"	J. Y. Gilmore	13 00
	7.	"	ins. ac. sugar, 10,000 @ ¾		75 00
	"	"	cash,	H. Lasage, 75 bks	101 25
	9.	"	"	Jno. Kenney	24 00
	"	"	"	Jno. Parker	22 00
	"	"	"	Dan. Crowley	26 00
	"	"	"	Wm. Johnson	28 55
				Am't carried forward	6,995 17

1885.		To am't bro't forward		6,995 17
Nov.	11.	"	cash,	J. I. Warren	600 00
	5.	"	"	F. B. Fleitas	750 00
	13.	"	"	A. M. & J. Solari	76 50
	"	"	"	J. J. Warren	500 00
	14.	"	"	H. Lesage, 200 bbles	270 00
	16.	"	"	F. B. Fleitas	500 00
	17.	"	"	G. W. Code	100 00
	18.	"	"	F. B. Fleitas	1,350 00
	"	"	"	note Homer & Roberts	1,773 05
	20.	"	"	G. E. Villere	200 00
	21.	"	"	J. J. Warren	600 00
	"	"	"	H. Lesage, 100 bbles	140 00
	23.	"	"	F. B. Fleitas	250 00
	"	"	"	Jas. Dare	50 00
	25.	"	"	Margaret Peine	238 95
	27.	"	"	F. B. Fleitas	750 00
	"	"	"	Bernard Berner	310 00
	"	"	"	H'y Walprom	30 00
	"	"	"	note Lewis Hollman	99 00
	28.	"	"	H. B. Barton	30 00
	"	"	"	H. Lacoge, 100 bbles	140 00
	30.	"	"	Jas. Dare	50 00
Dec.	1.	"	"	F. B. Fleitas	250 00
	2.	"	"	"	250 00

194

7,839 49

1885.		By am't bro't forward		7,839 49
Nov.	19.	"	net proceeds	32 B. M.	329 50
	"	"	"	273 B. S.	4,220 85
	26.	"	"	315 "	5,191 02
	"	"	"	185 B. M.	1,415 02
Dec.	3.	"	"	251 B. S.	4,316 58
	"	"	"	46 B. M.	333 79
	8.	"	balance		12,207 60

Account Annexed to the Answer of Shattuck & Hoffman—Continued.

1885.					1885.		
Dec.	2.	To cash, J. G. Clarke	46 71				
	"	" " Geo. Coddie	100 00				
195							196
Dec.	3.	To cash, B. Reamer	40 00				
	4.	" " J. J. Warren	750 00				
	"	" " note Homer & Roberts	1,779 16				
	"	" " Geo. E. Villere	314 20				
	5.	" " Magiunis Oil Works	113 40				
	"	" " H. Lesage, 100 bbles	140 00				
	"	" B. & A. M. Co., L't'd, note, Dec. 1, '85	12,600 00				
	"	" bills rec., " "	3,400 00				
	"	" due ac. B. & A. M. Co., 5 days, at 8 %, 12,600	14 00				
	"	" int. on bills rec., " 3,400	3 78				
	7.	" cash, F. B. Fleitas	250 00				
			$35,853 92				35,853 92
Dec.	8.	To balance ac. rend	12,207 60				
	"	" cash, F. B. Fleitas	250 00				
	11.	" " B. Biaure	150 00				
	"	" " J. I. Warren	750 00				
	12.	" " Julius Vairin & Co	96 78				
		Am't carried forward	13,454 38				
Dec.	12.	To am't bro't forward	13,454 38	Dec.	18.	By net proceeds 163 B. M.	1,261 25
	"	" cash, H. D. Coleman	98 60		"	" " " 228 B. S.	3,315 00
	"	" " M. Dowling	124 60		"	" " " 47 "	695 96
	15.	" " L. Lewis	46 45		"	" " " 27 "	415 99
	16.	" " V. De Bouchel	46 25				
	"	" " A. Les ge, 150 bbls	232 50				
	17.	" " J. F. Popp & Co	126 51				
	"	" " J. R. Ducross	65 00				
	"	" " B. Bene	150 00				
	"	" " J. B. Fleitas	750 00				
	18.	" " Geo. Heck & Co	274 10				
	"	" " note Homer & Roberts	1,784 50				
	"	" " Glidden & Curtis	3,513 40				
	21.	" " J. I. Warren	1,500 00				
	"	" " Julius Vairin & Co	207 81				

Dec.	22.	To cash, F. B. Fleitas	1,200 00	
	" " "	A. Martin	143 53	
	" " "	Thos. Probst	59 00	
	" " "	Louis Leco	49 50	
	" " "	Wm. Gunther	61 80	
	" " "	Harry Hasting	96 20	
	" " "	Theo. Houston	86 00	
	" " "	Geo. Code	400 00	
	23. " "	Bodley Bros.	40 55	
	" " "	H. B. Barton	30 00	
	" " "	Jas. Dare	253 40	
	" " "	J. G. Clarke	62 50	
	" " "	F. B. Fleitas	100 00	
	" " "	Louis Schwartz	250 00	
	24. " "	G Knoeble	87 35	
	26. " "	F. B. Fleitas	50 00	
	" " "	J. L. Boutte	700 00	
	28. " "	W. C. Erwin	30 00	
	" " "	M. C. Randal, ag't	97 85	
	" " "	L. & L. & G. Ins. Co.	750 00	
	" " "	B. D. Wood & Bros.	1,938 89	
	" " "	Geo. Code	50 00	
	" " "	Levy & Bro.	140 65	
	31. "	in ac. or Dr. balances	200 02	
1886.				
Jan'y	1. "	disc't ac. coupons, 1, 1, '86 {1,008 1,008 1,008 1,008}	4,032 00	
	4. "	cash, N. ac. Boutte	100 00	
	" "	Hernard & Braime	50 00	
	5. "	cash, E. E. Minez, taxes	277 80	
	6. "	F. B. Fleitas	200 00	
	7. " "	Mandeville B. & Taylor	698 49	
		Am't carried forward	34,609 63	5,688 20

1886.				1886.		
Jan'y	8.	To am't bro't forward	34,609 63		By am't bro't forward	5,688 20
	8. "	ins. ac., $5.000, @ ½	25 00	Jan'y	12. "	balance down 29,371 43
	" " "	5,000, @ ½	25 00			
	9. "	cash, F. B. Fleitas	50 00			
	11. " "	"	350 00			
			$35,059 63			$35,059 63

Account Annexed to the Answer of Shattuck & Hoffman—Continued.

1886.				1886.			
Jan'y 12.	To balance ac. rend		29,371 43	Feb'y 11.	By net proceeds 244 B. S.		4,344 01
19.	" cash, bills payable		624 80	24.	" " 3 "		54 03
21.	" " Geo. Codde		50 00	M'ch 1.	" " 388 "		6,920 93
"	" " H'y Lasage		120 00	"	" " 423 B. M.		2,408 84
30.	" " ack. release		1 00	18.	" " 959 B. S.		16,484 13
Feb'y 1.	" " J. E. Fleitas		242 44	"	" " 272 B. M.		1,425 95
9.	" ins. ac., Phœnix, sugar, $5,000		30 00	23.	" F. B. F. & Bro., No. 2, J. E. F.		242 44
11.	" cash, H'y Lasage, 100 bbls		115 00	"	" " " "		700 00
25.	" " J. L. Lyons & Co		310 71	"	" " J. L. Boutte		273 80
"	" " Holloway & Gardes		172 47	29.	" F. B. F. & Bro., No. 2, bal. transf.		331 80
26.	" " J. E. Fleitas		700 00				
27.	" " H'y Lasage		16 00				
M'ch 6.	" ins. ac. sugar, $5,000, @ 60c		30 00				
8.	" cash, J. L. Boutte		273 80				
10.	" " F. B. Fleitas		749 19				
29.	" int. ac. on Dr. balance		379 09				
			$33,185 93				$33,185 93
Ap'l 28.	To F. B. F. & Bro., No. 2, transf'd.		9 74	M'ch 31.	By net proceeds 3 B. M.		9 74

201 Dr. F. B. Fleitas & Bro., No. 2. Cr. 202

1886.			
Jan'y 11.	To cash, F. B. Fleitas		300 00
19.	" " B. J. West & Sons		41 27
20.	" " O. Thornan		106 25
"	" " J. Vairin & Co		97 61
21.	" " F. B. Fleitas		150 00
"	" " Geo. Heck & Bro		147 50
"	" " A. M. & J. Solari		25 78
29.	" " F. B. Fleitas		300 00
Feb'y 1.	" " Julius Vairin & Co		102 58
3.	" " Fred. Klus		100 00
13.	" " Geo. Codde		46 90
"	" " J. E. Fleitas		700 00
"	" " King & Walsh		55 80
16.	" " F. B. Fleitas		476 16
17.	" " "		50 00
"	" " "		25 00
	Am't carried forward		2,724 85

By balance down		6,735 19

		To am't bro't forward	2,724 85				
Feb'y	18.	" cash, F. B. Fleitas	75 00				
	20.	" " Smith & Boullemet	271 40				
	"	" " A. M. & J. Solari	34 08				
	23.	" " E. Brooks	44 30				
	25.	" " Jno. H. Hanna	162 60				
M'ch	2.	" " F. B. Fleitas	300 00				
	12.	" " J. E. "	450 00				
	18.	" " H. Walfem	20 00				
	"	" " Jas. Schwartz & Co	24 95				
	21.	" " F. B. F. & Bro., No 1, J. E. F., cash, Feb'y 1st	242 44				
	"	" " " " " " Feb'y 26	700 00				
	"	" " " J. L. Boutte, M'ch 8	273 80				
	"	" cash, Shell Beach R. R	55 30				
	24.	" " F. B. Fleitas	75 00				
	26.	" " J. E. "	600 00				
	29.	" Sugar, defcy com'n ac	304 99				
	"	" int. ac. on Dr. balances	44 68				
	"	" F. B. F. & Bro., No. 1, bal. transf	331 80				
			$6,735 19				6,735 19

203 F. B. Fleitas & Bro. in account with Shattuck & Hoffman. 204

M'ch	29.	To balance ac. rend	6,735 19	Ap'l	27.	By cash, net pro. $17,700	16,406 22
	31.	" cash, E. E. Nunez, sh'ff	500 00		28.	" F. B. F. & Bro. No. 1, bal. transf'd	9 74
Ap'l	1.	" " F. B. Fleitas	100 00				
	9.	" " J. E. "	650 00				
	10.	" " cl'k ct., St. Bernard parish	4 00				
	12.	" " " Harrison Co., Miss	3 00				
	13.	" " Jas. Thibonet, broker	4 00				
	15.	" " H. N. Frederick	28 35				
	19.	" " J. J. McFarland	60 00				
	20.	" " Dr. J. Morice	40 00				
	24.	" " J. E. Fleitas	575 00				
	1.	" " G. M. Richardson, ac. $12,500	2,000 00				
	28.	" " F. B. Fleitas	100 00				
	"	" balance down	5,616 42				
			16,415 96				16,415 96
Ap'l	30.	To cash re., doz., 50; p'k'ge, 1.50	2 00	Ap'l	28.	By balance ac. rend	5,616 42
May	1.	" " J. E. Fleitas	200 67	May	31.	" cash, error in d'ft Leeds & Co., 257.69	40
	3.	" " Leeds & Co	257 69				
	"	" " F. B. Fleitas	400 00				
	5.	" " Chase, Carley & Co	68 48				
	"	" " J. J. Warren	30 00				
	6.	" " Daniel Dixons	40 00				
	7.	" " J. E. Fleitas	650 00				
		Am't carried forward	1,708 84			Am't carried forward	5,616 82

Account Annexed to the Answer of Shattuck & Hoffman—Continued.

1886.				
		To am't bro't forward		1,708 84
May	12.	" cash, Benj. Ory		15 00
	21.	" " J. E. Fleitas		350 00
	26.	" " F. B. "		175 00
	31.	" " ci'k for cancelling note		1 50
June	1.	" " F. B. Fleitas		150 00
		" " J. H. Duggan		270 75
	3.	" " bills payable		219 44
		" " Thomas Bros		50 00
	4.	" " U. S. ct., St. Bernard parish		6 00
205				
June	5.	To cash, J. E. Fleitas		250 00
	9.	" " F. B Fleitas		25 00
	12.	" " L. Myers		223 70
	19.	" " J. E. Fleitas		450 00
	24.	" " Jno. G. Aiken		68 32
	30.	" " Max Levy & Bro		64 62
		" " int. ac. on Dr. balances		53 20
July	3.	" cash, F. B. Fleitas		30 00
		" " " J. E. "		500 00
		" " " J. G. Rowland		33 00
		" " " J. H. Duggan		251 25
	6.	" " F. B. Fleitas		200 00
	7.	" " Crescent City Ice Co		111 25
	13.	" " E. E. Nunez, sh'ff, taxes, I, '85		250 00
	17.	" " J. E. Fleitas		600 00
	31.	" " "		500 00
Aug.	7.	" " F. B. Fleitas		60 00
	10.	" " A. M. & J. Solari		72 77
	13.	" " J. E. Fleitas		375 00
	27.	" " "		300 00
		" " Justin Durel		50 00
Sept.	10.	" " J. E. Fleitas		300 00
	11.	" " F. B. Fleitas		75 00
	16.	" " "		40 00
	17.	" " "		35 00
	24.	" " "		400 00
Oct.	2.	" " "		200 00
	7.	" " "		600 00
	16.	" " "		100 00
	22.	" " "		750 00
		" " Antonio Benos		60 00
	27.	" " H. Lesage, 100 bbls		115 00
	30.	" " J. I. Warren		150 00
Nov.	3.	" ins. ac. sugar, 5,000, @ ¾		37 50
		" " " 5,000, " ¾		37 50
		Am't carried orward		10,314 64

	By am't bro't forward		5,616 82
206			
1886.	By am't bro't forward		
	Am't carried forward		5,616 82

1886.		To am't bro't forward		10,314 64
Nov.	4.	To cash, F. B. Fleitas		750 00
	6.	" " Jas. Dare		45 00
	8.	" " F. B. Fleitas		600 00
	10.	" " W. H. Case		25 00
	"	" " F. B. Fleitas		500 00
	15.	" " "		750 00
	16.	" " H. Lesage		115 00
	17.	" cash		20 00
	"	" cash, M. A. Maitre		31 25
	16.	" " Jas. Dare		30 00
	18.	" " Mrs. J. A. Pearce		20 00
	"	" " F. B. Fleitas		600 00
	20.	" " H'y Lesage, 100 bbls		115 00
	22.	" " Theo. Probst		34 65
	"	" " Jas. Dare		20 00
	"	" " sugar-maker		125 00
	23.	" " J. I. Warren		600 00
	"	" " T. Pendergrass		20 00
	25.	" " Margaret Pume		139 40
	"	" " J. A. Giroux		69 00
	26.	" " B. Blanue		142 20
	"	" " H. Lesage, 100 bbls		115 00
	29.	" " F. B. Fleitas		600 00
D.	1.	" " J. I. Warren		400 00
	2.	" " Jas. Dare		20 00
	3.	" " Jno. H. Hanna		49 68
	"	" " J. T. Gibbons		35 01
	"	" " E. Brooks		35 00
	4.	" " F. B. Fleitas		100 00
	"	" " H. Lesage, 100 bbls		110 00
	7.	" " Rob't Horner, coal		3,000 00
	8.	" " F. B. Fleitas		300 00
	11.	" " "		100 00
	"	" " H'y Lesage		105 00
	"	" balance down		5,885 81
				$25,921 64

1886.		By am't bro't forward		5,616 82
Nov.	5.	" net proceeds 56 b. S.		903 55
	9.	" " 240		3,641 46
	13.	" " 91		1,323 51
	15.	" " 127		1,797 56
	17.	" " 47 B. M		294 55
	20.	" " 106 B. S.		1,601 05
	23.	" " 87 B. S.		1,308 00
	"	" " 75 B. M		470 57
	30.	" " 213 B. S.		3,110 98
Dec.	4.	" " 218 "		3,248 24
	10.	" cash, stmr. Alvin, 19lb, sugar, 4⅞		85
	11.	" net proceeds 177 B. S.		2,604 46
				25,921 64

1886.				
Dec.	13.	To cash, F. B. Fleitas		2,000 00
	15.	" " W. G. Peirce		69 00
	"	" " F. B. Fleitas		2,000 00
	"	" " Jas. Dare		179 50
	"	" " "		30 00

Dec.	11.	By balance ac. rend		5,885 81
	17.	" cash stmr. Neptune, 832 sugars		42 64
	18.	" net proceeds 319 B. S.		4,888 80
	"	" " " 264 B. M		2,027 52
	27.	" " " 155 "		1,238 72

GILBERT M. RICHARDSON ET AL.

Account Annexed to the Answer of Shattuck & Hoffman—Continued.

1886.				1886.	
Dec. 16.	To cash, L. & L. & G. Ins. Co	750 00		Dec. 27. By net proceeds 178 B. S.	2,696 73
" " "	W. F. & D. C. Mellen	300 00		1887.	
		5,328 50		Jan'y 4. " " " 151 B. M.	1,149 60
					17,929 82
	To am't bro't forward	5,328 50			
Dec. 17.	To cash, Geo. Zeller	168 50			
" " "	H. McCallum	100 00			
" " "	F. B. Fleitas	500 00			
" " "	Geo. Bents	103 95			
" " "	W. F. & D. C. Mellen	182 32			
" "	ins. ac. sugar, 5,000, @ .50	25 00			
18. "	cash, F. B. Fleitas	100 00			
20. " "	"	150 00			
" " "	H'y Lesage	100 00			
22. " "	N. Boutte	281 00			
23. " "	New England Life Ins. Co	97 85			
24. " "	J. E Fleitas	150 00			
27. " "	J. I. Warren	200 00			
" " "	A. M. & J. Solari	83 65			
31. "	int. on Dr. balances	73 79			
" "	cash, tarpaulins 214 B. S	2 00			
1887.					
Jan'y 1. "	disc't ac. coupons, Jan'y 1, '87	$1,008 / 1,008 / 1,008	3,024 00		
" { "	8 %, Jan'y 1, '86, 12,600, to Ap'l 1, '86	252	888 00		
{ " "	Ap'l 1, '86, 10,600, " Jan'y 1, '87	636			
3. "	cash, F. B. Fleitas		50 00		
5. " "	H. McCullum		100 00		
6. "	ins. ac., L. & L. & G. Ins. Co	Jan'y 29, '87 / " 30, '87	50 00		
12. "	cash, F. B. Fleitas		200 00		
" "	balance down		5,971 26		
			$17,929 82		17,929 82

211 F. B. Fleitas & Bro. in account with Shattuck & Hoffman. 212

Jan'y 15.	To cash, F. B. Fleitas	300 00		1887.	
17. "	note due Dec. 1, '86, M't'ge Co	12,600 00		Jan'y 12. By balance ac. rend	5,971 26
" "	8 % int. on $12,600, Dec. 1, '86, Jan'y 17, '87	134 40		17. " cash, L. & L. & G. Ins. Co	15,000 00
" "	note due Dec. 1, '86, A. R. S.	5,100 00		18. " " " " "	29,261 30

18.	"	M't'ge Co. note, due Jan'y 1, '87	10,600 00		
"	"	" " " "	12,600 00		
"	"	disc't, 8 %, Jan'y 1st to 18, 1887, $10,600	42 40		
"	"	" " " 12,600	50 40		
"	"	cash, F. B. Fleitas	1,500 00		
"	"	" "	50 00		
19.	"	" "	1,000 00		
21.	"	" Sterns Fertilizing Co.	84 13		
24.	"	" Bodley Bros.	72 38		
"	"	" F. B. Fleitas	600 00		
29.	"	" J. L. Boutte, Jr.	100 00		
31.	"	" F. B. Fleitas	1,000 00		
"	"	" tarpaulin bill	1 50		
"	"	" fr't & dray on plantation	5 20		
Feb'y 1.	"	" Howard, Flower & Co.	869 36		
			46,709 77		50,232 56
Feb'y 1.	To am't bro't forward		46,709 77	1887. By am't bro't forward	50,232 56
2.	"	sugar, def'cy com's, 2½ %, $45,237.37	1,130 93		
	"	balance down	2,391 86		
			50,232 56		50,232 56
Feb'y 7.	To cash, F. B. Fleitas		2,391 86	Feb'y 2. By balance ac. rend.	2,391 86
21.	"	" "	550 00	M'ch 11. " net proceeds 8 B. M.	62 33
M'ch 14.	"	" "	62 33	1888.	
"	"	" Benj Ory	50	Feb'y 2. " balance down	2,593 94
June 30.	"	int. ac. on Dr. balance	15 77		
Sept. 12.	"	cash, B. Ory; releases, W. A. B to Mrs. F	50		
1888.					
Feb'y 2.	"	sugar, def'cy com's, 2½ % on $80,000	2,000 00		
"	"	int. ac. on Dr. balances	27 17		
			5,048 13		5,048 13

213 F. B. Fleitas & Bro. in account with Shattuck & Hoffman. 214

Feb'y 2.	To balance rend.		2,593 94	1888.	
June 30.	"	int. ac. on Dr. balances	85 32	June 30. By balance	2,679 26
			2,679 26		2,679 26
June 30.	To balance		$2,679 26		

215 *Answer of Wm. F. Mellen. Filed Dec. 5th,* 1888.

United States Circuit Court, Eastern District of Louisiana. In Equity.

Mrs. Corinne Warren Fleitas
vs.
Wm. F. Mellen *et als.* } No. 11702.

The separate answer of Wm. F. Mellen to the amended and
216 supplemental bill of complaint of the complainant herein.

Answering, he says—

That it is not true that he participated with the other respondents herein or any of them in any device or scheme to defraud or extort money from F. B. Fleitas, the husband of the complainant herein, and he denies having any knowledge of any such scheme or device between the other respondents or any of them; and, for further answer, he says that he has no interest whatever in this cause, and he here adopts, as fully as if set forth and reiterated in detail, the answer already filed by him to the original bill of complaint herein.

Wherefore he prays that said bill and amended and supplemental bill of complaint be, as to him, dismissed with costs, *and* etc.

(Signed) WM. F. MELLEN.

State of Louisiana, }
Parish of Orleans. }

Before me, the undersigned authority, personally came and appeared William F. Mellen, who, being duly sworn, says that all the matters and things set forth in his foregoing answer are true in substance and in fact.

(Signed) WM. F. MELLEN.

Sworn to and subscribed before me this 5th day of December, 1888.

[L. S.] (Signed) BENJAMIN ORY, *Not. Pub.*

217 *Replication. Filed Jan'y* 5, 1889.

Circuit Court of the United States, Eastern District of Louisiana.

Replication. No. 11702. In Equity.

The replication of Mrs. Mary C. Fleitas, complainant, to the several answers of Wm. F. Mellen, Gilbert M. Richardson, Wm. B. Shattuck, the commercial firm of Shattuck and Hoffman, A. B. Shattuck and F. B. Hoffman, defendants, to the original, amended and supplemental bill of the said Mary C. Fleitas, assisted by F. B. Fleitas, her husband.

This repliant, saving and reserving unto herself all and all manner of advantage of exception to the manifold insufficiencies of said several answers, and particularly that the same are not verified or

sworn to in the manner required by law or before any officer authorized by law to administer oaths in that respect and behalf, for replication thereunto saith that she will aver, maintain, and prove her said original, supplemental and amended bills to be true, certain, and sufficient in law to be answered unto, and that each and all of said several answers of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant.

218 Without this, that any other matter or — whatsoever in the said several answers or any of them contained material or effectual in the law to be replied unto, confessed, avoided, traversed, or denied is true.

All of which matters and things this repliant is and will be ready to aver and prove as this hon. court shall direct, and prays as in and by her said bills she hath already prayed.

(Signed) J. R. BECKWITH,
Sol. for Complainant.

Answer of Geo. Moorman, U. S. Marshal. Filed Jan'y 7th, 1889.

Circuit Court of the United States, Eastern District of Louisiana.
In Equity.

Mrs. CORINNE WARREN FLEITAS *et al.*
vs.
W. F. MELLEN *et al.*
} No. 11702.

The answer of George Moorman, United States marshal, made a respondent to the bill, amended bill, and supplemental bill herein filed, saving and reserving all lawful exceptions to the many defects and insufficiencies of each of said bills, says—

219 That he denies having any interest whatsoever in this controversy and any knowledge whatsoever of the facts averred, except in so far only as come within his cognizance and within his duty as United States marshal in the execution of the processes of this court.

That he denies any and all of the averments made setting forth any claim as against him.

And, further specially answering, says that it is true that pursuant to the order of this court issued in suit No. 11722 of the docket of this honorable court on the 22nd day of November, 1888, he did seize the property described in the bill, amended bill, and supplemental bill, and he avers and shows that pursuant to the further orders of this court, issued on the 7th day of December, 1888, he released the same forthwith.

That this respondent made these seizures in his official capacity as United States marshal under lawful orders issued by this honorable court and in obedience thereto, and that he should be held harmless.

Wherefore this respondent prays that, having fully answered, the complaint as against him be dismissed, and he prays for such fur-

ther orders and relief as the nature of the case may require and equity may demand.

(Signed) WALTER D. DENEGRE,
Solicitor for Geo. Moorman, Respondent.

STATE OF LOUISIANA, }
Parish of Orleans. }

220 Before me, E. R. Hunt, clerk of the circuit court of the United States for the eastern district of Louisiana, personally came George Moorman, who, being duly sworn, declared that he is the respondent in the foregoing answer named, and that the facts and averments therein made and set forth are true.

(Signed) GEO. MOORMAN.

Sworn to and subscribed before me this 7th day of January, 1889.

(Signed) E. R. HUNT,
Clerk of the U. S. Circuit Court for the Eastern District of Louisiana.

Appointment of Examiner. Entered and Filed March 18, 1889.

United States Circuit Court, Eastern Dist. of La.

Mrs. MARY CORINNE WARREN FLEITAS, Wife, &c., }
vs. } No. 11702.
WM. F. MELLEN *et al.* }

On motion of J. R. Beckwith and Rouse & Grant, solicitors for complainant, and suggesting that they have notified defendants that they desire the evidence to be adduced in this cause to be taken orally under rule 67, in equity—

It is ordered that Henry Langford be appointed special examiner herein to take said evidence and report the same to the court.

(Signed) EDWARD C. BILLINGS, *Judge.*

221 *Discontinuance as to W. F. Mellen. Entered and Filed May* 31*st*, 1889.

U. S. Circuit Court, Eastern District of La.

Mrs. M. C. FLEITAS }
vs. } No. 11702.
WM. F. MELLEN *et al.* }

Upon motion of J. R. Beckwith and Rouse & Grant, solicitors for complainant, suggesting that Wm. F. Mellen, one of defendants herein, departed this life since the cause was at issue, and it appearing from his answer and disclaimer that he is not a necessary party, it is ordered that as to him the suit be discontinued and be proceeded with as to all other defendants.

(Signed) J. R. BECKWITH,
ROUSE & GRANT, *Sol'rs.*

Hearing and Submission.

Extract from the Minute Book, April Term, 1889.

NEW ORLEANS, FRIDAY, *May* 31, 1889.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

222 Mrs. MARY CORINNE WARREN FLEITAS
vs.
WM. F. MELLEN *et als.* } No. 11702.

This cause came on this day to be heard on the bill of complaint, the supplemental bill, the several answers of the defendants, the replication thereto, and the exhibits and testimony, J. R. Beckwith and Rouse & Grant appearing for complainant, Thos. J. Semmes and D. C. Mellen for the defendants; whereupon complainant offered the following evidence in support of her original and supplemental bills, viz:

1st. An authentic copy of the ante-nuptial contract passed before Magner, N. P., Feb'y 6th, 1868, by and between Francois Barthelemy Fleitas and Miss Mary Corinne Warren, being Exhibit 4 annexed to the answer of the defendant Richardson, together with the marginal inscriptions thereon.

2nd. Act of sale of Myrtle Grove plantations by L. E. Lemarie to F. B. Fleitas before Kerr, notary public, Jan'y 7, '82, marked Complainant No. 1.

3rd. Sheriff's deed of Corinne plantation, Febr'y 9th, 1874, to Mrs. Widow B. Fleitas, marked Complainant No. 2.

4th. Act of sale of Corinne plantation, April 28th, 1877, by Widow Berthelemy Fleitas to F. B. Fleitas, marked Complainant No. 3.

5th. Certified copy of the record of the suit No. 294 of the 24th judicial district court, parish of St. Bernard, entitled Mrs. Mary Corinne Warren, wife of F. B. Fleitas, *vs.* F. B. Fleitas, contained in the transcript of the record of this case on removal from
223 the civil district court, parish of Orleans.

6th. The judgment and *fi. fa.* in said suit No. 294, contained in said transcript.

7th. The sheriff's deed conveying said plantations to complainant by virtue of the sale made to her under said *fi. fa.*, together with the certificates thereon, marked Complainant No. 9.

8th. Photograph of the inscriptions upon the records of the mortgage office in St. Bernard parish, Louisiana, in Book of Mortgages No. 6, referred to in testimony of Albert Estopinal herein and marked Complainant No. 5.

9th. Certificate of the deputy recorder upon the copy of the marriage contract (Exhibit 4), one of said certificates dated Febr'y 1, '88, and the other without date.

10. Certificate of E. R. Hunt, clerk, marked Complainant 6.

11th. Affidavit of A. J. Padron, showing pub.ication of judgment

recorded by Mrs. Fleitas against her husband, marked Complainant No. 7.

12th. Record of the proceedings in case of Gilbert M. Richardson *vs.* F. B. Fleitas, No. 11722 of this court (excepting the evidence taken before the master), marked Complainant No. 8.

13th. Act of mortgage by F. B. Fleitas in favor of Albert Bertus, passed before Ducatel, N. P., June 28, 1871, marked Complainant No. 10.

14th. Testimony of Thomas Appleton, Charles A. Phillipi, F. B. Fleitas, Mrs. M. C. W. Fleitas, Albert Estopinal, and J. J. Warren, taken and returned by Henry Langford, examiner herein.

15th. Petition of F. B. Fleitas to be declared a bankrupt,
224 No. 1533, in U. S. district court for the district of La.

16th. Schedule A annexed to said petition.

17th. List of creditors who proved their debts in said bankruptcy.

18th. Such documentary evidence, if any, not enumerated above as is mentioned in the evidence taken before Henry Langford, examiner, as being offered before him.

And defendants offered the following on their behalf, viz:

1. The defendants offer in evidence all the exhibits annexed to their respective answers.

2. The act of sale by the sheriff of the parish of St. Bernard conveying Corinne plantation to Mrs. B. Fleitas, mother of F. B. Fleitas, dated 7 Feb'y, 1874.

3. The act of sale, dated 28 April, 1877, whereby Mrs. B. Fleitas conveyed to her son, F. B. Fleitas, said Corinne plantation, the same being Complainant's Exhibit No. 3.

4. The certificate of discharge in bankruptcy granted by the district court of the United States, east. district of La., in suit No. 1533, in bankruptcy, to Francis B. Fleitas, the husband of the complainant, dated 25 April, 1877, and marked Exhibit M, filed in the cause 19 May, 1888.

5. The two marginal inscriptions on the marriage contract, marked Exhibit 4, annexed to defendant Richardson's answer, said marginal inscriptions both being made by Philip Toca, recorder of the parish of St. Bernard, one dated 18 March, 1874, and the other dated 25 April, 1877. The language of the inscriptions is given at length in testimony and is also inscribed on the margin of said exhibit.

The defendants object to the introduction of the following
225 testimony and move to suppress the same:

1. To the testimony taken in the cause of Mrs. F. B. Fleitas against her husband in suit No. 294 in the 24th judicial district court, parish of St. Bernard—

On the ground that the testimony of the witnesses in that cause is *res inter alios acta* as to those defendants, and besides they have had no opportunity to cross-examine the witnesses.

2. To the testimony of F. B. Fleitas, the husband of the complainant, taken in said suit No. 294 and in this suit on the ground that the husband is not a competent witness in the suit against

him by his wife nor is he competent to testify for his wife in this suit.

3. That the record of the suit of Richardson *v.* F. B. Fleitas has no bearing on this suit and the matters therein are immaterial in this controversy, and on that ground the said record should be excluded.

And the cause was argued by the solicitors for the parties, respectively, and submitted, when the court took time to consider.

Complainant's Offerings.

Antenuptial contract copied at page 92 of this transcript.

Act of Sale, Marked Complainant No. 1.

STATE OF LOUISIANA, }
City of New Orleans. }

226 Be it known that on this seventh day of January, in the year of our Lord one thousand eight hundred and eighty-two, before me, Anatole Anthony Ker, a notary public in and for the city of New Orleans, parish of Orleans, State of Louisiana, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Louis Emile Lemarié, Esquire, residing in this city, who declared that for the consideration and on the terms and conditions hereinafter set forth he does by these presents grant, bargain, sell, assign, convey, transfer, deliver, abandon, and set over, under all lawful warranties and with substitution and subrogation to all his rights and actions of warranty against all preceding owners and vendors, unto Francis B. Fleitas, Esquire, a resident of the parish of St. Bernard, in this State, here present, accepting, purchasing, and acknowledging delivery and possession for himself and his heirs and assigns, all and singular the following-described property, to wit:

A tract of land or plantation, known as the "Myrtle Grove" plantation, situate in the parish of St. Bernard, in this State, on the left bank of the River Mississippi, at about two and a half leagues below the city of New Orleans, and measuring about twenty arpents, more or less, front on said river, but on a line running at right angles from the intersection of the levee with the lower side line measuring nineteen arpents and twelve toises in width, and
227 having on the said lower side line, which separates it from the property of Ducros, a depth of two hundred and thirty-one and a half arpents, and on the upper side line, which separates it from the property of G. Villeré, a depth of one hundred and ninety-seven and one-third arpents, both side lines diverging four degrees fifty-four minutes and thirty seconds, and running to the line of the property of Antoine Michand, which bounds the said plantation in the rear, the whole in conformity to a plan drawn by Allon d'Hémécourt on the 25th September, 1857.

And also all the right, title, interest, property, claim, and demand of him, said Lemarié, of, in, and to any other and further portion

or portions of land which shall or may appear to belong to the above-described plantation according to and by virtue of the original grants and titles.

And also all and every right and title of reclamation and claim for indemnity which the said Lemarié now has or had or may hereafter appear to have against the Government of the United States of America in the event that the whole or any part of the land on which Fort Bienvenue is erected and established shall prove to have been taken from the plantation herein conveyed.

The said plantation is composed of nineteen lots or tracts, designated by the Nos. one to nineteen, inclusive, on a plan drawn by M. Allon P. d'Hémécourt, surveyor, on the 9th May, 1839, deposited as plan No. fifty-three in the office of Theodore Seghers, late a notary in this city, which lots were a subdivision of the plantation formerly owned by Simon Cucullu and described as having nineteen to twenty arpents front on the River Mississippi by a depth ex-
228 tending to Lake Borgne, on the lower side, and to the property of Berthelemy Lafon at Chef Menteur, on the upper side, and bounded above by the lands of Jacques and Gabriel Villeré and below by the lands of Rodolphe Joseph Ducros and Pierre Adolphe Ducros—

Being the same property which was acquired by the present vendor by purchase from P. O. Fazende by act passed before Charles T. Soniat, a notary public in this city, on the 7th of January, instant, 1882.

This present sale is made and accepted for and in consideration of the total sum and price of eighteen thousand dollars, in deduction and part payment whereof the said purchaser has paid cash, in ready current money of the United States of America, unto the said present vendor, in the presence of the undersigned notary and witnesses, the sum of forty-five hundred dollars, the receipt of which is hereby acknowledged and acquittance and discharge granted therefor; and for the balance of said price, to wit, the sum of thirteen thousand five hundred dollars, the said purchaser has furnished his three several promissory notes, all dated May 14th, 1881, each for the sum of forty-five hundred dollars, drawn and subscribed by him to his own order and by him endorsed and made payable respectively at the Germania National bank of this city in one, two, and three years after date, with interest from date at the rate of eight per cent. per annum until paid; which said notes, after having been severally paraphed "*ne varietur*" by me, notary, to be herewith identified, were delivered to the said present vendor, as he acknowledges.

It is agreed by the parties hereto that the said present pur-
229 chaser shall have the privilege at the maturity of each of the notes herein given of once extending the same for one year on payment of the interest then due on the note proposed to be extended.

It is agreed, covenanted, and stipulated that should said notes herein given not be punctually paid at their respective maturities, and in the event of suit for the collection of all or either of them,

the said purchaser shall be liable, and he hereby contracts to pay all attorney's fees which may be incurred in their collection, which fees he hereby fixes at five per cent. on the amount sued for.

And in order to secure the payment of said notes at maturity, together with all accrued interest and attorneys' fees hereinabove stipulated, vendor's lien and privilege are hereby retained in the herein-conveyed property in favor of the said present vendor or any future holder or holders of said notes; and the said purchaser declared that he does hereby mortgage, affect, and specially hypothecate said property in favor of the said vendor or any future holder or holders of said notes to secure their payment, with promise not to sell, alienate, mortgoge, or encumber the same to the prejudice of this act:

To have and to hold the said property herein conveyed unto the said present purchaser, his heirs and assigns, to his and their proper use, benefit, and behoof forever.

The State, parish, and levee taxes for and up to the year 1881 have been paid, as is established by the production of the tax receipts; and the said vendor hereby obligates himself to pay all and any taxes on said property which may still be due up to and
230 including the year 1881.

The said vendor declares that there are no mortgages standing in his name and recorded against the property herein conveyed, and obligates himself to furnish within a delay of twelve days a certificate from the recorder of the parish of St. Bernard showing the property herein conveyed to be free of encumbrance.

Thus done and passed in my office, at New Orleans, on the day, month, and year aforesaid, in presence of Messieurs Jérome Nennier and Sidney E. Davis, competent witnesses, who hereto sign their names, together with the said parties hereto and me, notary, after a due reading of the whole.

(Original signed) L. E. LEMARIÉ.
F. B. FLEITAS.
J'ME MENNIER.
SIDNEY E. DAVIS.
ANAT. A. KER, *N. P.*

A true copy from the original.
[L. S.] (Signed) ANAT. A. KER, *N. P.*

The mortgage certificates which the vendor obligated himself to furnish within twelve days from the date of this act have been produced and annexed to the original, of which the above is a copy.

New Orleans, January 23d, 1882.
(Signed) ANAT. A. KER, *N. P.*

STATE OF LOUISIANA,
Parish of St. Bernard.

CLERK'S OFFICE, *Feb'y* 11, 1882.

I do hereby certify that the foregoing act of sale and mortgage was this day duly recorded in my office in Book of Conveyances No.

15, folios 121 *et seq.*, and in Book of Mortgages No. 10, folios 196 *et seq.*

[SEAL.] (Signed) J. R. DUCROS,
D'y Clerk, ex Officio Recorder.

231 *Sheriff's Deed of Corinne Plantation, Marked Complainant No. 2.*

STATE OF LOUISIANA,
Parish of St. Bernard.

SHERIFF'S OFFICE.

Whereas I, Albert Estopinal, sheriff of the parish of St. Bernard, by virtue of a writ of seizure and sale to me directed by the second judicial district court of Louisiana in and for the parish of St. Bernard, dated the 20th day of January, 1874, wherein Mrs. Marie Modeste Dorotheé Cuculla, widow of Barthelemy Fleitas, is plaintiff and Francis Barthelemy Fleitas defendant, known on the docket of said court as No. 707, and after having fulfilled and complied with all the previous legal requisites, did seize the following-described property, to wit: A certain sugar plantation situate in the parish of St. Bernard, in this State, at about seven miles below the city of New Orleans, on the left bank of the River Mississippi, about nineteen arpents front on the said River Mississippi by a depth extending to Lake Borgne, bounded on the upper line by the property of Messrs. Ereville Villere and Denis Villere and on the lower part by the property of A. W. Walker, together with the buildings and improvements thereon, and also fifty mules, two horses, ten wagons, five small carts, one water cart, thirty plows, nine cultivators, two harrows, one fluck, one ratoon cutter, two subsoils, and all other implements of husbandry thereunto belonging or in anywise appertaining.

And after having given due and legal notice to the said Francis Barthelemy Fleitas of the said seizure in the manner pointed
232 out by law I advertised the said before-described property for sale after the expiration of the legal delay from the time of said notice, to wit, ——, 1874, by advertisements, composed in the English language, announcing the sale to take place at the court-house of the parish of St. Bernard on Saturday, the 7th day of February, 1874, at 11 o'clock a. m.; said advertisements were, according to law, posted up in three different public places in this parish, to wit, one at the door of the court-house of said parish, and one at that of Francisco Artiela's coffee-house, and one on that of the door of the parish church, from the said — day of ——, 1874, to the day of sale, being fully thirty days from the date of the first notice given and posted up to the day of sale.

And having further complied with and performed all the additional previous requisites and after the said before-described property having been duly appraised, — did expose the same at public auction, according to law, at the said court-house of the parish of St. Bernard, on the seventh day of February, 1874, at 11 o'clock a. m., and at the time and place of sale I did read verbatim and in a loud

and audible voice the notice declaring the nature and description of the property seized and advertised for sale, and the certificate of the recorder of mortgages of the parish of St. Bernard delivered on the day of sale, and by which certificate it appears that there are no other mortgages standing in the name of Francis Barthelemy Fleitas and recorded against the before-described property than the following:

233 First. The mortgage granted in favor of Mrs. Mary Corinne Warren, wife of the said F. B. Fleitas, resulting from her marriage with her said husband, F. B. Fleitas, as per act passed before Selim Magner, notary public of the city of New Orleans, on the 6th day of February, 1868, said mortgage being of the sum of twenty thousand dollars, to secure to the said Mrs. F. B. Fleitas the restitution and reimbursement of her matrimonial, dotal, paraphernal rights. The above-recited contract of mortgage was duly recorded in Book of Mortgages No. 6, fo. 132 to 135, on the 27th of September, 1871.

Second. The mortgage which the said F. B. Fleitas granted in favor of Alfred Bertus by an act passed before Amedée Ducatel, notary public in New Orleans, on the 29th day of June, 1871, to secure the payment of the sum of twenty-eight thousand dollars, represented by a certain promissory note of a like sum of $28,000, dated this day, stipulating to bear interest at the rate of eight per cent. per annum from maturity until paid, and made payable one year after date, said note marked and signed "*ne varietur*" by A. Ducatel, notary public, for identification. The above-recited note of $28,000 has been reduced by payment to the sum of fourteen thousand dollars and the mortgage erased, annulled, and cancelled *pro tanto*, said above-recited mortgage so granted by the said F. B. Fleitas being the same now the property of Mrs. Marie Dorothée Cucullu, widow of the late B. Fleitas, her deceased husband, and as will more fully appear by the following declaration of the said Mrs. B. Fleitas in the words following, to wit: That said Mrs. By. Fleitas is holder and owner of a certain promissory note for the sum of twenty-eight thousand dollars, made and subscribed before

234 the said Francis Barthelemy Fleitas to his own order and by him endorsed, dated the 29th day of June, 1871, and made payable one year after date, bearing interest at the rate of eight per cent. per annum from maturity until paid, signed *ne varietur* by Amedée Ducatel, notary public, under date of the 29th June, 1871; that the payment of the said note is secured by the mortgage granted by the said Francis Barthelemy Fleitas in favor of Alfred Bertus, per act of the 29th of June, 1871, before A. Ducatel, a notary public; that the one-half of the said note has been paid to her, she having received fourteen thousand dollars in part payment of the said note, and that she does hereby acknowledge that by virtue of the payment to her made of the said sum of fourteen thousand dollars, the said note of twenty-eight thousand dollars being now reduced to fourteen thousand dollars, she does hereby give her full, free, and entire consent that the said mortgage granted by the said F. B. Fleitas in favor of the said Alfred Bertus, as per the said afore-

said act of the 29th June, 1871, before the said Amedee Ducatel, notary public, to secure the payment of the said note of twenty-eight thousand dollars be now restricted to fourteen thousand dollars, which above-recited mortgage was recorded in Book of Mortgages No. 6, fo. 204 to 207, on the 13th of July, 1871.

Third. A mortgage or lien claimed by Messrs. D. C. McCann and Sons, under affidavit and four bills, amounting together to the sum of three thousand seven hundred and forty $\frac{52}{100}$ dollars, for foundry work, materials, and machinery made and furnished by said McCann & Sons between the 31st March, 1871, and 27th January,
235 1872, to F. B. Fleitas, for the Corinne plantation, situated in the parish of St. Bernard, which mortgage and lien was duly recorded in full in Book of Mortgages, volume 6, fo. 308 to 316, on 16th April, 1873.

Fourth. A mortgage or privilege claimed by Messrs. Blymer Norton & Co., of Cincinnati, Ohio, under a bill and affidavit claiming the sum of one thousand six hundred and forty-seven $\frac{98}{100}$ dollars, balance due for machinery, pumps, boilers, tanks, which privilege or lien aforesaid was duly recorded in Book of Mortgage-, volume 6, folios 340 to 441, on the 31st day of August, 1872.

Fifth. A mortgage or privilege against said F. B. Fleitas in favor of C. Cavaroc & Son, as per act passed before G. Le Gardeur, Jr., notary public, dated 27th December, 1872, to secure the sum of twenty-five thousand dollars, being advances of money made by the said firm of Cavaroc & Son to enable the said F. B. Fleitas to carry on the works of the plantation which said Fleitas owns in the parish of St. Bernard; which above-recited mortgage was duly recorded on 3rd of February, 1873, in Book of Privileges No. 6, folios 366 to 370, inclusively.

Sixth. Another mortgage granted by the said Fleitas to Cavaroc & Sons, as per act of the 23rd January, 1873, before the same notary, Gust. Le Gardeur, Jr., as the whole will more fully appear by reference to the said act of the 23rd January, 1872, before said notary, G. Le Gardeur, Jr., by which the said Corinne plantation, owned by the said F. B. Fleitas, together with all the buildings and improvements, machinery, &c., are hereby mortgaged to the said Cavaroc & Sons; which above-recited mortgage was recorded *in extenso*
236 in Book of Mortgages No. 6, folios 371 to 378, on the 4th day of February, 1873.

Seventh. The mortgage granted by Messrs. Edmond Villere, Denis Villere, Gabriel Ereville Villere, and Eloise Villere, wife of Alfred Bodin, former owners of the above-described property, now owned by F. B. Fleitas, as the whole will more fully appear by reference to several acts passed before A. Boudousquie, late notary public, dated July 21st and 22, 1865, recorded on the 4th of August, 1865, and 5th of August, 1865; said mortgage granted by the above-named parties in favor of Mrs. Widow Manuel Cruzat and Pierre Hoa.

Eighth. The mortgage which the said Messrs. Villere and Mrs. A. Bodin granted in favor of several persons by an act passed before Amedée Ducatel, notary public, on the 4th day of December, 1867;

said above-recited mortgage so granted by the said Messrs. Villere and Mrs. A. Bodin amount- to the sum of sixty-four thousand one hundred and six $\frac{30}{100}$ dollars; which said two last-recited mortgages are fully mentioned in the act of sheriff's sale to F. B. Fleitas, dated 9th August, 1870, and were duly recorded in Book of Mortgages No. 6, folios 406 to 411, on the 4th day of March, 1873, at the special request of Mr. Pierre Maspero, of New Orleans.

Ninth. A mortgage or lien claimed by Keep, Hogan & Co., under an affidavit made by them claiming the sum of eleven hundred and fifty-one dollars 91 cents, evidenced by a note furnished by said F. B. Fleitas for a like sum, dated January 10th, 1873, said mortgage and lien in Book of Mortgages No. 6, folios 430, on the 2nd August, 1872.

Tenth. A mortgage or privilege against F. B. Fleitas in favor of Messrs. Warren, Atkinson & Co., under bill and affidavit
237 claiming the sum of ten thousand one hundred and eighty-eight $\frac{54}{100}$ dollars for money advanced and purchase of necessary supplies and the payment of necessary expenses of said plantation; which privilege was duly recorded in Book No. 6, folios 451 to 452, on the 27th day of November, 1873.

Eleventh. A certain mortgage or lien against F. B. Fleitas in favor of D. W. Eames, agent of the Norwork iron works, under bill and affidavit made by him for the sum of four hundred and twenty-five dollars for furnishing steam-pump, said privilege duly recorded in Book of Mortgages No. 6, folio 463, on the 12th day of January, A. D. 1874.

Twelfth. A mortgage or lien against F. B. Fleitas in favor of Oliver P. Alford, claiming under bill and affidavit the sum of nineteen hundred and twelve $\frac{50}{100}$ dollars for nine mules sold to said F. B. Fleitas, said lien or privilege duly recorded in Mortgage Book No. 6, folio 369, on the 28th January, 1874.

Thirteenth. Another mortgage or lien against F. B. Fleitas in favor of Charles Nolan, as per bill and declaration of his, claiming three hundred and fifty dollars for digging and canalling on the plantation of F. B. Fleitas, which said work was done by said Charles Nolan on the said Fleitas plantation in the month- of February and March, A. D. 1873; which said privilege was duly recorded in Book of Privileges, volume 6, folio 470, on the second day of February, 1874.

Fourteenth. And a general mortgage against the said F. B. Fleitas in favor of the State of Louisiana by virtue of the revenue bill of said State of Louisiana to create a revenue and passed by
238 the legislature of said State, said claim due by the said F. B. Fleitas amounting to the sum of one thousand and sixty-eight $\frac{55}{100}$ dollars, and is claimed by the State tax collector for the parish of St. Bernard, in the name of the State of Louisiana, for taxes due for the years 1871 and 1872; which said taxes are recorded against the plantation of the said F. B. Fleitas in conformity to law.

Fifteenth. And another mortgage or lien claimed by Thos. Hanly, as per bill and declaration made by him, claiming the sum of nine

hundred and forty-two $\frac{50}{100}$ dollars for canalling the Corinne plantation, in St. Bernard, and owned by the said F. B. Fleitas, said works on said plantation being fourteen and a half acres, at sixty-five dollars per acre, $942.50.

When Hampden Story, Esq., for account of Mrs. Marie Celeste Dorothée Cucullu, widow of Barthelemy Fleitas, being the highest and last bidder, I have adjudicated the said before-described property to the said Widow Barthelemy Fleitas for the price and sum of twenty-eight thousand dollars. The purchaser being the plaintiff and — mortgage creditor paid me cash the sum of — for clerk, recorder, and sheriff fees and the taxes recorded against said Corinne plantation and retained in her hands the balance of the price of adjudication, say the sum of — dollars. The said sale is made subject to such decision as may be rendered upon the intervention and third opposition filed January 28th, 1874, by Messrs. Blymyer, Norton & Co. in the suit of Widow B. Fleitas *vs.* F. B. Fleitas, No. 707 of the docket of the second judicial district court of Louisiana
239 for the parish of St. Bernard, and also the intervention and third opposition of Mr. Oliver P. Alford, filed on the 28th January, 1874, for the value of nine mules claimed by said Alford and which were duly appraised separately from the plantation in the matter of Mrs. Widow B. Fleitas *vs.* F. B. Fleitas, No. 707 of the docket of the 2nd judicial district court for the parish of St. Bernard, and the purchaser aforesaid has also acknowledged possession of the property sold.

Now, therefore, know all men by these presents that I, the said sheriff, in consideration of the premises and by virtue of the laws of the State of Louisiana in such cases made and provided, do sell and transfer the said before-described property to the said Mrs. B'y Fleitas and all the rights and title which the said F. B. Fleitas had in or to the said before-described property; to have and to hold the same to the said Mrs. Widow Barthelemy Fleitas, her heirs and assigns forever.

In witness whereof I have hereunto signed my name, at the parish of St. Bernard, State of Louisiana, this 9th day of February, 1874, and the ninety-eighth year of the Independence of the United States of America, in presence of the undersigned witnesses.

(Signed) ALBERT ESTOPINAL, *Sheriff.*

Witnesses:

(Signed) E. E. NUNEZ.
(Signed) B. A. BARROSSE.

STATE OF LOUISIANA,
Parish of St. Bernard.

240 I do hereby certify the above and foregoing to be a true and faithful copy of the original act as inscribed in my office on the tenth day of February, 1874, in Book of Sheriff's Deeds No. 1, folios 160 to 169, inclusive.

Clerk's office, February 12th, 1889.

(Signed) J. P. DUCROS,
[L. S.] *Clerk, ex Off. Recorder.*

Act of Sale of Corinne Plantation, Marked Complainant's No. 3.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this twenty-eighth day of April, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred and first, before me, Nicholas Browse Trist, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mrs. Marie Modeste Dorothee Cucullu, a resident of this city, widow, of lawful age, of the late Barthelemy Fleitas, who declared that, for the price and upon the terms and conditions hereinafter expressed, she does by these presents grant, bargain, sell, convey, transfer, assign,
241 and set over under all the warranties of law and with substitution and subrogation to all her rights, title, and actions in warranty against any and all antecedent vendors or warrantors unto Francis B. Fleitas, of the parish of St. Bernard, in this State, here present accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof, the following-described property, to wit:

A certain sugar plantation now known as the "Corinne plantation," situate in the parish of St. Bernard, in this State, at about seven miles below the city of New Orleans, on the left bank of the River Mississippi, — river by a depth extending to Lake Borgne, bounded on the upper line by property now or formerly of Messrs. Ereville Villere and Denis Villere and on the lower line by the property now or formerly of A. W. Walker—

Together with the buildings and improvements thereon, including sugar-house, mill, engine, machinery, and apparatus for manufacturing sugar, the utensils thereof, tools and implements of husbandry, carts, wagons, plows, &c., the mules and other live stock thereon, and all other things to said plantation belonging without any exception or reservation:

To have and to hold the said property and appurtenances unto the said purchaser, his heirs and assigns forever, by virtue hereof.

The said property was acquired by the present vendor by purchase at a sale made on the seventh (7) day of February, 1874, by the sheriff of said parish of St. Bernard in the suit of the said Mrs. M. M. D. Cucullu, widow of B. Fleitas, against said F. B. Fleitas, in the district court of the parish of St. Bernard, second judicial
242 d-strict of this State, as appears from the deed of said sheriff, recorded in the clerk's office of said court and in the recorder's office of said parish, as the parties declare.

And the said vendor here declared that the following encumbrances stand recorded in her name in said parish of St. Bernard against the property herein conveyed, to wit:

1st. The mortgage which she granted in favor of the firm of Chism & Boyd, of this city, by an act passed before the undersigned notary

on the 13 January, 1877, to hold them harmless on her bond as sureties up to the amount of eight thousand dollars.

2d. A judicial mortgage resulting from a judgment rendered by the circuit court of the United States against her in favor of Cockrem & Halsey, receivers, for the sum of five thousand dollars, interest and costs.

3. The mortgage which she granted in favor of said Chism & Boyd to secure fourteen thousand nine hundred and twenty-four $\frac{30}{100}$ dollars, evidenced by a promissory note for that amount made by her to her own order and by her endorsed, dated March 17, 1877, payable on the first of January next, 1878, with eight per cent. per annum interest from maturity until paid, as per act of even date with said note passed before the undersigned notary.

4th. The mortgage which she granted in favor of said Chism & Boyd by act passed before the undersigned notary on the 17th day of March, 1877, to secure the sum of thirteen thousand dollars, evidenced by two promissory notes made by her to her own order and by herself endorsed, of even date with said act, each for the sum of six thousand five hundred dollars, payable on the first of January next, 1878, with eight per cent. per annum interest from maturity until paid.

243 The present sale is made and accepted for and in consideration of the price and sum of thirty-nine thousand nine hundred and twenty-four $\frac{30}{100}$ dollars, in part settlement and reduction whereof the said purchaser hereby assumes to pay in the place and stead of said vendor her note for fourteen thousand nine hundred and twenty-four $\frac{30}{100}$ dollars, above thirdly described and secured by mortgage as aforesaid on the property herein conveyed, and for the remainder of the price, to wit, twenty-five thousand dollars, the said purchaser has furnished five several promissory notes, drawn by him to the order of and by himself endorsed, each for the sum of five thousand dollars, dated this day, payable respectively on the thirty-first of December, 1878, 1879, 1880, 1881, and 1882, with interest at the rate of eight per cent. per annum from date until paid, which notes have been paraphed "*ne varietur*" by me, notary, for identification herewith and delivered to the vendor, as she acknowledges.

And in case it shall become necessary to institute legal proceedings for the recovery of the amount of the said notes or of any part thereof the said purchaser binds himself and his heirs to pay the fees of the attorney-at-law who may be employed for that purpose, which fees are hereby fixed at five per cent. on the amount due and sued for.

Now, therefore, in order to secure the full and punctual payment of said five promissory notes, in principal and interest, and all costs, including the attorney's fees aforesaid, the property herein conveyed

244 is and shall remain specially mortgaged and affected by privilege in favor of the said vendor or any future holder or holders of said notes, it being hereby agreed between the parties that the present act shall bear confession of judgment in favor of any holder or holders of said notes until final payment, the said purchaser hereby binding himself and his heirs not to sell,

alienate, or encumber the said herein-conveyed property to the prejudice of this act.

It is hereby agreed by and between the parties hereto that the said purchaser shall, at his option, have the right of postponing the payment of his aforesaid notes one year from their respective maturities, which privilege has been mentioned on the backs of said notes.

And as a further consideration for the present sale the purchaser assumes to pay in the place and stead of said vendor all advances made up to date by Chism & Boyd, of this city, for the purpose of working and cultivating said plantation and which are secured by the mortgage above fourthly recited and by privilege on and pledge of the crops growing thereon.

As regards the judicial mortgage of five thousand dollars above secondly recited, the said purchaser binds himself hereby to pay whatever final judgment may be rendered against the vendor in the suit of Cockrem & Halsey, receivers, *vs.* Mrs. Widow B. Fleitas, in the circuit court of the United States, and now on appeal, and he takes said plantation subject to the mortgage granted to Chism & Boyd, above first recited, to secure them as sureties on her bonds in said suit.

The mortgage certificate otherwise required by law is dispensed with by consent of the parties hereto, who exonerate me,
245 notary, from all responsibility in the premises.

The State and parish taxes are declared paid by the vendor, who has produced the receipts for the years 1875. The purchaser assumes the payment of the taxes for 1876 and takes upon himself the obligation of having a copy of the present act duly recorded, according to law, in said parish of St. Bernard.

This done and passed, at the residence of the vendor in this city, she being too ill to attend at my office, in the presence of Benjamin Oliver and John G. Wilson, competent witnesses, domiciliated in this city, who sign these presents with the appearers and me, notary, on the day, month, and year first above written after reading of the whole.

(Original signed)
BENJ. OLIVER.
J. G. WILSON.

V'VE B'MY FLEITAS.
F. B. FLEITAS.
N. B. TRIST, *Not. Pub.*

Copy.

Received May 2, 1877, to be recorded in mortgage and conveyance offices.

(Signed) PHILIPPE TOCA, *Recorder.*

STATE OF LOUISIANA,
Parish of St. Bernard.

The undersigned, recorder of mortgages for the parish of St.
246 Bernard, State of Louisiana, does hereby certify that the foregoing deed of sale was duly recorded this day in this office,

in accordance to law, in Book of Mortgages No. Eight, folios 75 to 76, and in Book of Conveyances No. 13, folios 194 to 198.

Parish of St. Bernard, May 3d, A. D. 1877.

(Signed) PHILIPPE TOCA, *Recorder.*

A true copy of the original on file in my records.

New Orleans, February 14, 1889.

[L. S.] (Signed) N. B. TRIST, *Not. Pub.*

Certified copy of the record of the suit No. 294, etc., copied at page 24 of this transcript.

Judgment and *fi. fa.* in said suit No. 294 copied at page 35 of this transcript.

Sheriff's Deed Conveying said Plantations to Complainant, etc., Marked Complainant No. 9.

STATE OF LOUISIANA,
Parish of St. Bernard.

247 Whereas I, Esteve E. Nunez, sheriff of the parish of St. Bernard, by virtue of a writ of *fieri facias* to me directed by the honorable the 24th judicial district court of the State of Louisiana for the parish of St. Bernard aforesaid and issued in the matter entitled Mrs. Mary Corinne Warren, wife of F. B. Fleitas, *versus* F. B. Fleitas, her husband, known as suit No. 294 on the docket of said district court, after having fulfilled and complied with all the previous legal requisites, did seize and take into my custody and possession the following-described property, viz:

1st. A tract of land or plantation, known as "Myrtle Grove plantation," situated in the parish of St. Bernard, in this State, on the left bank of the Mississippi river, at about two and a half leagues below the city of New Orleans, and measuring about twenty arpents, more or less, front on said river, but on a line running at right angles from the intersection of the levee with the lower side line measuring nineteen arpents and twelve toises in width, and having on the said lower line, which separates it from the property formerly belonging to Ducros, a depth of two hundred and thirty-one and one-half (231½) arpents, and on the upper side line, which separates it from the property formerly belonging to G. Villere, a depth of one hundred and ninety seven and one-third (197⅓) arpents, both side lines diverging four degrees fifty-four minutes and thirty seconds, and running to the line of the property of Antoine Michaud, which bounds the said plantation in the rear, the whole in conformity with plan drawn by Allon D'Hemecourt on the 25th of September, 1857.

248 And all the right, title, interest, property, claim, and demand of him, said Fleitas, of, in, and to any other and further portion or portions of land which shall or may appear to belong to the above-described plantation according to and by virtue of the original grants and titles.

And also all and every right and title of reclamation and claim

for indemnity which the said Fleitas now has or had or may hereafter appear to have against the Government of the United States of America in the event that the whole or any part of the land on which Fort Bienvenu is erected and established shall prove to have been taken from the plantation herein seized.

The said plantation is composed of nineteen lots or tracts designated by the numbers 1 to 19, inclusive, on a plan drawn by Allon D'Hemecourt, surveyor, on the 19th of May, 1839, deposited as plan No. 33, in the office of Theodore Seghers, late a notary in the city of New Orleans, which lots were subdivision of the plantation formerly owned by Simon Cucullu and described as having nineteen to twenty arpents front on the Mississippi river by a depth extending to Lake Borgne, on the lower side, and to the property of Barthelemy Lagon, at Chef Menteur, on the upper side, and bounded above by the lands formerly belonging to Jacques and Gabriel Villere and below by the lands formerly belonging to Rodolphe Joseph Ducros—

Being the same property which was acquired by said Fleitas by purchase from L. E. Lemarie, by act passed before Anatole A. Ker, a notary public in the city of New Orleans, on the 7th January, 1882.

249 2°. A sugar plantation situated in the parish of St. Bernard, in this State, at about 7 miles below the city of New Orleans, on the left bank of the Mississippi river, measuring about (19) nineteen arpents, more or less, front on said river by a depth extending to Lake Borgne, bounded on the upper line by property formerly belonging to Messrs. E. G. Villere and Denis Villere and on the lower line by the plantation formerly belonging to A. W. Walker—

Being the property which said F. B. Fleitas acquired from Mrs. B. Fleitas by act of sale dated April 28th, 1877, and registered in Book of Conveyances No. 13, page 194, of the records of the parish of St. Bernard, La., and known as Corinne plantation, together with all the buildings and improvements thereon, implements of husbandry, plows, carts, wagons, mules, machinery, cultivators, and all other agricultural implements thereunto belonging or in anywise appertaining.

And after having given due and legal notice to said defendant of the said seizure in the manner pointed out by law did advertise the said before-described property for sale after the expiration of the legal delay from the time of said notice, to wit, on the 13th day of October, 1887, by advertisements, composed in English, announcing the sale to take place at the court-house of the said parish of St. Bernard, located at Terre-Aux-Boeufs, on C. D. Armstrong'- premises, on Saturday, the 19th day of November, 1887, at 11 o'clock a. m. Said advertisements were inserted and published in English in one newspaper in the parish of St. Bernard, to wit, in the St. Bernard Eagle, the official journal of the said parish of St. Bernard,

250 from the said 13th day of October, 1887, to the day of sale, being full thirty days from the date of the first notice given in said newspaper. Said advertisements were inserted and published in said newspaper on the 13th, 20th, and 27th days of October, 1887, and on the 3rd, 10th, and 17th days of November, 1887.

And having further complied with and performed all the additional previous legal requisites and after the said property having been duly appraised did expose the same at public sale by auction, according to law, at the said court-house of the parish of St. Bernard, on the said 19th day of November (1887), eighteen hundred and eighty-seven, at eleven o'clock a. m., and at the same time and place of sale I did announce in a loud and audible voice the terms and conditions of sale hereinafter expressed and specified and did read verbatim and in a loud and audible voice the certificate of the clerk of said district court and *ex officio* recorder of mortgages for the parish of St. Bernard delivered on the day of sale, and by which certificate it appears that there are no other mortgages standing in the name of Francis B. Fleitas and recorded against said before-described property than the following, to wit:

1. Parish tax of 1884, $400.
2. State tax of 1884, $240.
3. Levee tax of 1884, $200.
4. Parish tax of 1885, $400.
5. State tax of 1885, $240.
6. Levee tax of 1885, $200.
7. Parish tax of 1886, $350.

251 8. State tax of 1886, $210.

9. Levee tax of 1886, $175.
10. Parish tax of 1887, $280.
11. State tax of 1887, $168.
12. Levee tax of 1887, $140.

13th. The mortgage granted by said F. B. Fleitas in favor of Gilbert M. Richardson to secure the sum of $63,000, with interest and costs, as per act passed before Ben. Ory, notary public in New Orleans, on the 28th day of January, 1884, recorded on the 29th day of same month and year in Book of Mortgages No. 12, fos. 80 and *seq.*, but which mortgage has been partially cancelled, the sum of $37,800 having been paid thereon, as shown by the marginal notes on the records of this office.

14. The mortgage granted by the said F. B. Fleitas in favor of Mrs. Marie Modeste Dorothee Cucullu, widow of the late Barthelemy Fleitas, to secure the sum of twenty-five thousand dollars, with interest and costs, as per act passed before N. B. Trist, notary in New Orleans, on the second day of February, 1884, and recorded on the 9th day of same month and year, in Book of Mortgages No. 12, fos. 97 *et seq.*

15. A judgment in favor of Wm. H. Reynolds and *als.* against F. B. Fleitas for the sum of $791.82, with interest and costs, recorded December 7th, 1886, Book of Mortgages No. 13, fos. 91 and 92.

16. The lien and privilege granted by the said F. B. Fleitas in favor of Widow B. Fleitas, to secure advances made to the amount of $9,500 on the crops grown on said plantation during the current year 1887, as per act passed before Ferdinand Kirchner,

252 notary in New Orleans, dated August 27th, 1887, and duly recorded on the 16th day of September, 1887, in Book of Mortgages No. 13, fo. 218 & *seq.*

17. The judicial mortgage resulting from a judgment of the 24th judicial district court of Louisiana in and for the said parish of St. Bernard, rendered and signed on the 10th day of September, 1887, in the suit entitled Mrs. Mary Corinne Warren, wife of F. B. Fleitas, *versus* F. B. Fleitas, her husband, bearing the No. 294 of the docket of said court, said judgment being for the sum of $20,000, and all costs of suit, in favor of the plaintiff and against the defendant, and the said mortgage to take rank and effect from the 27th day of September, 1870.

18. The judicial mortgage resulting from a judgment of the 24th judicial district court of Louisiana in and for the parish of St. Bernard, rendered September the 8th and signed September 10th, 1887, in the suit entitled Henry Le Sage *versus* F. B. Fleitas, bearing the No. 258 on the docket of said court, said judgment being in favor of plaintiff and against defendant for the sum of $1,284, with 5% interest thereon from January 1st, 1885, until paid, and all costs of suit, recorded October 1st, 1887, B. M. 13, fo. 229.

19. The agreement entered into between the said F. B. Fleitas and Lucius Forsyth, per act under private signature of date 27th September, 1887, and duly recorded on the 8th day of October, 1887, in Book of Mortgages No. 13, fo. 229 and *seq.*

And at the time and place of sale I did read verbatim and in a loud and audible voice the certificate of the register of conveyances in and for the parish of St. Bernard, State of Louisiana,
253 delivered on the day of sale, and by which certificate it does not appear that said F. B. Fleitas alienated said before-described property.

When J. J. Warren, Esq., of this parish, the special agent and attorney-in-fact of Mrs. Mary Corinne Warren, wife of F. B. Fleitas, being the highest and last bidder for account and on behalf of the said Mrs. Mary Corinne Warren, wife of said F. B. Fleitas, and separated in property from her said husband, F. B. Fleitas, by virtue of a judgment rendered and signed on the 10th day of September, 1887, by the hon. the 24th judicial district court of Louisiana in and for the parish of St. Bernard, in the suit entitled Mrs. Mary Corinne Warren, wife of F. B. Fleitas, *versus* F. B. Fleitas, her husband, and bearing the No. 294 of the docket of said court, I have adjudicated the said hereinabove described property to the said Mrs. Mary Corinne Warren, wife of the said F. B. Fleitas, for and in consideration of the price and sum of twenty thousand dollars.

The purchaser, being the plaintiff and first-ranking creditor according to the judgment in this case, has paid me cash the said price of adjudication in the following manner, viz:

Amount due for taxes of 1887	$588 00

The receipts for the taxes for the other years having been exhibited.

2. Paid also cash the sum of	26 65

Being the clerk's fees in this case, and—

3. The additional sum of 287 60

For sheriff's fees and other cost herein, making a total sum of $902 25

254 Paid cash, and has retained in her hands the balance of the price of adjudication, say the sum of 19,097 75

To be applied to that extent to the credit of her said claim.

Now, therefore, know all men by these presents that I, the said sheriff, in consideration of the premises and by virtue of the laws of the State of Louisiana in such cases made and provided, do sell and transfer the said before-described property to the said Mary Corinne Warren, wife of F. B. Fleitas, and all the right and title which the said F. B. Fleitas had in or to the said before-described property; to have and to hold the same to the said Mrs. Mary Corinne Warren, wife of F. B. Fleitas, her heirs and assigns forever.

In witness whereof I have hereunto sign- my name, in the parish of St. Bernard, in the State of Louisiana, this nineteenth day of November, in the year one thousand eight hundred and eighty-seven, and the one hundred and twelfth of the Independence of the United States of America.

(Signed) E. E. NUNEZ,
Sheriff of the Parish of St. Bernard.

Signed in the presence of the following competent witnesses:
(Signed) V. DE BOUCHEL.
J. R. DUCROS.

Duly recorded at the parish of St. Bernard, in Book of Conveyances No. 17, folios 136, 137, 138, 139, and 140; in Sheriff's Book No. 2, folios 60, 61, 62, 63, and 64, on this the 23rd day of November, A. D. 1887.

(Signed) CHS. N. GARDENNE,
[L. S.] *Clerk, ex Officio Recorder.*

255 Photograph of the inscriptions upon the records of the mortgage office in St. Bernard parish, Louisiana, in Book of Mortgages No. 6, referred to in testimony of Albert Estopinal herein and marked Complainant No. 5, same as marriage contract copied at page 92 of this transcript.

Certificates of the deputy recorder upon the copy of the marriage contract (Exhibit 4), one of said certificates dated Feb'y 1, '88, and the other without date, copied at page 95 of this transcript.

Certificate of E. R. Hunt, Clerk, Marked Complainant 6.

NEW ORLEANS, LA., *March* 30, '89.

I certify that after diligent search I am unable to find in the records of this office the judgment alleged to have been rendered by the "U. S. circuit court, Judge E. C. Billings presiding, signed April 25, 1877," referred to in certificate of "Philippe Toca, recorder," inscribed on the record of the marriage contract between F. B. Fleitas and Miss Mary Corinne Warren.

Witness my hand and seal of court, at the city of New Orleans, this 30 day of March, 1889.

[L. S.] (Signed) E. R. HUNT, *Clerk.*

256 *Affidavit of A. J. Padron, Showing Publication of Judgment Recovered by Mrs. Fleitas against her Husband, Marked Complainant No. 7.*

Circuit Court of the United States for the Eastern District of Louisiana.

Mrs. MARY CORINNE WARREN, Wife of F. B. Fleitas,
vs.
WM. F. MELLEN *et al.*

EASTERN DISTRICT OF LOUISIANA,
Parish of St. Bernard.

A. J. Padron, being duly sworn, deposeth and saith that he was the publisher of the "St. Bernard Eagle," the official paper of the said parish of St. Bernard, State of Louisiana; that the advertisement, of which the following is a copy—

Judgment.

Twenty-fourth Judicial District Court in and for the Parish of St. Bernard.

Mrs. MARY CORINNE WARREN, Wife of F. B. Fleitas,
vs.
F. B. FLEITAS, Her Husband. No. 294.

257 This case, having been assigned for trial this day, came on for hearing pursuant to said assignment; present for plaintiff, White & Saunders, of counsels, defendant appearing in proper person.

When, after hearing evidence, both documentary and oral, by reason of the law, and evidence being in favor of the plaintiff and against the defendant, it is ordered, adjudged, and decreed that there be judgment in favor of Mrs. Mary Corinne Warren, wife of F. B. Fleitas, against her said husband, dissolving the community of *acquits* and gains existing between herself and her said husband and decreeing a separation of property between herself and her said husband.

It is further ordered, adjudged, and decreed that the said Mrs. Mary Corinne Warren, wife of F. B. Fleitas, do have and recover of her said husband judgment for the sum of twenty thousand dollars, the amount of paraphernal property belonging to her and received by her said husband; it is ordered, adjudged, and decreed that the said sum be, and the same is hereby, recognized as secured by legal mortgage according to law upon all the real estate of said F. B. Fleitas situated in this parish, the said legal mortgage to take rank and effect from the 27th day of September, 1870.

Defendant to pay all costs.

Judgment rendered this 10th day of September, A. D. 1887.

Judgment signed this day, the 10th day of September, A. D. 1887, being the last day of the term.

(Signed) A. E. LIVAUDAIS,
Judge 24th Judicial District, La.

A true copy.

CHAS. M. GARDANNE, *Clerk.*

St. Bernard, Sept. 10th, 1887.

258 was published in the said "St. Bernard Eagle" and was inserted in the newspaper and published on the following dates, viz., October 6th, 13th, 30th, and 27th, 1887, and also November 3 and 10th, 1887.

(Signed) A. J. PADRON,
Editor St. Bernard Eagle.

Sworn to and subscribed before me this 25th day of May, 1888.

(Signed) A. NUNEZ,
Justice of the Peace, St. Bernard Parish, La.

Witness:

(Signed) JOHN TAAFFE.

Record of the proceedings in case of Gilbert M. Richardson *vs.* F. B. Fleitas, No. 11722 of this court (excepting the evidence taken before the master), marked Complainant No. 8.

259 UNITED STATES OF AMERICA:

United States Circuit Court, Eastern District of Louisiana. Equity Docket.

GILBERT M. RICHARDSON
vs.
FRANCIS B. FLEITAS. } No. 11722.

Bill of Complaint. Filed June 29, 1888.

To the honorable the judges of the circuit court of the United States, fifth judicial circuit, eastern district of Louisiana:

Your orator, Gilbert M. Richardson, who is a citizen of the State

of New York, residing in the city of New York, in said State of New York, unto your honors respectfully shows—

That Francis B. Fleitas, who is a citizen of the State of Louisiana, residing in the parish of St. Bernard and within the jurisdiction of this court, on the 28th day of January, 1884, being then indebted to your orator in the sum of sixty-three thousand dollars for money lent, executed and delivered to your orator his five promissory notes of that date, to the order of your orator, and payable at the Louisiana National Bank of New Orleans, La., with interest from maturity at the rate of eight per cent. per annum, each for the sum of
260 twelve thousand six hundred ($12,600) dollars, to mature January first (fixed), 1885, 1886, 1887, 1888, and 1889, respectively, and having attached one, two, three, four, and five interest coupons respectively.

That to secure the full and punctual payment of all said notes and coupons the said Francis B. Fleitas, by authentic act of mortgage passed before Benjamin Ory, a notary public in and for the parish of Orleans, on the said 28th day of January, 1884, did specially mortgage and hypothecate in favor of your orator and his assigns and in favor of all subsequent holders of said promissory notes the following-described property, including the buildings, fixtures, and all improvements and appurtenances situated thereon, to wit: First, a certain tract of land or plantation known as the "Myrtle Grove," situated in the parish of St. Bernard, in the State of Louisiana, on the left bank of the River Mississippi, at about two and one-half leagues below the city of New Orleans, measuring about twenty arpents, more or less, front on said river, but on a line measuring at right angles from the intersection of the levee with the lower side measuring nineteen arpents and twelve toises in width, and having on the lower side line, which separates it from the lands of Ducros, a depth of two hundred and thirty-one and one-half arpents, and on the upper side line, which separates it from the property of Gabriel Villeré, a depth of one hundred and ninety-seven and one-third arpents, both side lines diverging four degrees fifty-four minutes and thirty seconds and running to the
261 property of Antoine Michand, which bounds said plantation in the rear, being the property which said F. B. Fleitas acquired from L. E. Lemarie by act passed January 7th, 1882, recorded in Book No. 15, fol. 121–123, of the records of conveyances of St. Bernard parish, La.; second, a sugar plantation situated in St. Bernard parish, at about seven miles below the city of New Orleans, on the left bank of the River Mississippi, measuring about nineteen arpents front on said river by a depth extending up to Lake Borgne, bounded on the upper line by property belonging to Messrs. Erreville F. Villeré and Denis Villeré and on the lower line by the plantation of A. W. Walker, being the property which the said F. B. Fleitas acquired from Mrs. B. Fleitas by act of sale dated April 28th, 1877, and registered in Book of Conveyances No. 13, p. 194, of the recorder of St. Bernard parish, La., and known as the "Corinne" plantation; and also all the engines, boilers, kettles, and other machinery, and all other property of whatsoever name or

description immovable by destination then on or that might be thereafter placed on or attached to said plantations or either of them.

That in and by said act of mortgage said Fleitas bound himself to pay and reimburse unto your orator and holders of said notes all such attorneys' fees, all costs, charges, and expenses as your orator might incur or pay in the event of non-payment of said promissory notes at maturity or of any legal proceedings being instituted at any time for the protection or preservation of the rights of the mortgagee or any future holder of said notes, said attorneys' fees to be
262 fixed at five per cent. on the amount in suit and unpaid; and said Fleitas also, in and by said act of mortgage, further bound himself and his heirs not to alienate, deteriorate, or encumber said mortgaged property to the prejudice of said mortgage act.

That said F. B. Fleitas, in and by said act of mortgage, declared and acknowledged his indebtedness to your orator as evidenced by said notes and coupons and consented and stipulated that in the event the debts or any portion thereof secured or intended to be secured by said act of mortgage should not be punctually paid when due it should be lawful for, and he thereby authorized your orator or any subsequent holder of said notes to cause, said mortgaged property to be seized and sold under executory process, without appraisement, to the highest bidder, for cash, and expressly confessing judgment in favor of your orator and all holders of said notes for the full amount thereof, capital and interest, together with all costs, charges, and expenses whatsoever.

That said five promissory notes hereinbefore described and all the interest coupons thereto attached were by said notary duly and legally paraphed "*ne varietur*" to identify them with said act of mortgage and were then, with said act of mortgage, delivered to your orator as aforesaid, represented in said act by his agent and attorney, Wm. F. Mellen, who received said notes and accepted said mortgage for your orator.

That said act of mortgage was filed for record in the mortgage office of said — Bernard parish January 29th, 1884, and duly
263 recorded in Mortgage Book No. 12, pp. 80–87, of the mortgage records of said parish.

All of which will appear by reference to a certified copy of the said original act of mortgage, hereto annexed, marked Exhibit "A," and made a part hereof, and to the two of said promissory notes maturing according to their tenor January 1st (fixed), 1888, and January 1st (fixed), 1887, respectively, and the coupons annexed thereto, viz., three each for $1,008.00, two maturing January 1st, 1888, and one January 1st, 1889, which two notes and coupons are still held and owned by your orator and hereto annexed as Exhibits B, C, D, E, and F, and made part hereof.

That all the other of said notes and coupons have been paid and satisfied and cancelled.

That said Shattuck & Hoffman, a commercial firm named in said act of mortgage, have no interest in said notes, and your orator is informed and believes that they have no interest in said

act of mortgage. Your orator has given them notice of this proceeding.

Your orator avers that under said notes and mortgage there is now part due and owing to your orator by said F. B. Fleitas the sum of twenty-five thousand two hundred dollars ($25,200), as evidenced by the two said unpaid principal notes, with interest, at eight per cent. per annum thereon, from January 1st, 1888, and the sum of two thousand sixteen dollars ($2,016), as evidenced by the two coupons which fell due January 1st, 1888, with interest thereon, at five per cent. per annum, from January 1st, 1888.

264 That amicable demand for the payment thereof has been made and refused.

The premises considered, your orator prays that said mortgage may be rendered executory; that a writ of seizure and sale may issue according to law; that after all legal delays said mortgaged property may be seized and sold to satisfy the amount of plaintiff's demand as herein set forth, to wit, twenty-seven thousand two hundred and sixteen dollars, with interest on twenty-five thousand and two hundred dollars thereof, at eight per cent. per annum, from January 1st, 1888, and on two thousand and sixteen dollars thereof at five per cent. from January 1st, 1888, and five per cent. attorneys' fees on said amount so in suit and all costs; that said sale may be for cash without appraisement. He prays for all and general relief in the premises; and as, &c.

(Signed) WM. F. & D. C. MELLEN &
THOS. J. SEMMES,
Sol'rs for Complainant.

STATE OF LOUISIANA, }
Parish of Orleans. }

Before me, the undersigned authority, personally came and appeared William F. Mellen, who, being sworn, says that he is the attorney of the complainant in the foregoing bill; that said complainant, Gilbert M. Richardson, is absent from this city and

265 State, and that all the allegations of the foregoing bill are true in substance and in fact to the best of his knowledge and belief.

(Signed) W. F. MELLEN.

Sworn to and subscribed before me this 28th day of June, 1888.

[SEAL.] (Signed) BENJAMIN ORY, *Not. Pub.*

Notice of the foregoing bill and the allegations thereof acknowledged and accepted.

(Signed) SHATTUCK & HOFFMAN,
P'r JOHN G. ROWLANDS.

Order.

Let a writ of seizure and sale issue herein, as prayed for and according to law, to satisfy complainant's demands as set forth in foregoing bill and petition. Let the marshal seize and take into his

possession according to law the property described in the foregoing petition, and then let the sale of this property be stayed till the further orders of this court.

New Orleans, June 29th, 1888.

(Signed) EDWARD C. BILLINGS, *Judge.*

Entered and filed June 29, '88.

266 *Mortgage, Marked Exhibit A. Filed June 29th,* 1888.

DECEMBER, 1882.

Mortgage.

STATE OF LOUISIANA, }
Parish of Orleans. }

Be it known that on this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and eighty-four, before me, Benjamin Ory, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared Francis Barthelemy Fleitas, of Saint Bernard parish, Louisiana, who, in the presence of me, said notary, and the subscribing witnesses hereinafter named, declared that he is justly indebted unto Gilbert M. Richardson, of the city of New York, in the sum of sixty-three thousand ($63,000) dollars for money lent, as evidenced by the five promissory notes of said Francis Barthelemy Fleitas, of even date herewith, to the order of Gilbert M. Richardson, and payable at the Louisiana National Bank of New Orleans, Louisiana, with interest from maturity at the rate of eight per cent. per annum, as follows: Five principal notes, each of the sum of twelve thousand six hundred dollars ($12,600), due January first (fixed), A. D. 1885, 1886, 1887, 1888, and 1889, and having attached, respectively, one, two, three, four, and five interest coupons, which said notes, after having been paraphed by me, the said notary, to identify them herewith, have been delivered to the said
267 Gilbert M. Richardson, herein represented by William F. Mellen, of the parish of Orleans, State of Louisiana, who hereby acknowledges the receipt thereof;

And that whereas the said appearer has obligated and does by these presents, in consideration of the mutual covenants, agreements, and benefits provided and contained in certain articles of agreement executed the 28th day of January, A. D. 1884, by and between said appearer and Messrs. Shattuck & Hoffman, cotton factors and commission merchants of New Orleans, La., a commercial firm composed of Albert R. Shattuck and Frank B. Hoffman, and to which agreement reference is now particularly made, obligate himself, the said appearer, and his heirs, executors, administrators, and assigns, to gether and put in condition to ship to market as rapidly as possible the crop of sugar and molasses that said appearer or his heirs, executors, administrators, and assigns may raise upon or control from the property hereinafter described during the years 1884, 1885, 1886, 1887, and 1888 and during any following year or years, so long as any portion of the debt

secured or intended to be secured by this act shall remain unpaid, and to ship said sugar and molasses, from time to time as the same may be ready for market, to said Shattuck & Hoffman, in New Orleans, to be by them sold on arrival at their option; and that whereas, under said articles of agreement, said appearer expects to and may become indebted to said Shattuck & Hoffman, during said year or years, on open account or otherwise or for money paid out and advanced to and for said appearer in and about the making, handling, conveyance, carriage, storage, insurance, and
268 sales of said crops of sugar and molasses or otherwise, but which indebtedness to said Shattuck & Hoffman shall in no event exceed in the aggregate an amount equal to the said indebtedness to said Gilbert M. Richardson;

And that whereas it is understood and agreed that said appearer will promptly pay all taxes, assessments, and charges that are or would be a lien upon said property as the same may be due and payable, and will keep the buildings and machinery situated thereon insured for the full term of this mortgage in some responsible company or companies satisfactory to the mortgagees herein in the sum of twenty-five thousand dollars, and will assign and deliver said policies of insurance to said Shattuck & Hoffman for the use and benefit of all and any persons interested in the debts secured herein, and that if said appearer shall fail to pay any of the taxes, assessments, or other legal charges upon said property when they become due or shall permit the same to be sold therefor or forfeited for want of bidders or shall fail to obtain or keep alive said insurance, then said Gilbert M. Richardson and said Shattuck & Hoffman or either of them or any of their successors or assigns or any person or persons interested in any of the debts hereby secured shall be entitled to pay the same, but this clause shall not be construed as obligatory on the holder or holders of said promissory notes or said Shattuck & Hoffman or other parties in interest or as rendering them or any of them liable for any loss, damage, or injury which may result from the non-insurance of said buildings, and in case of sale
269 for taxes to redeem said property, and that all moneys so paid and all expenses incurred therein and thereby and all payments made at the option of said Gilbert M. Richardson or by said Shattuck & Hoffman or by any person interested as aforesaid for premiums of insurance as hereinbefore provided and all sums now due or to become due to said Shattuck & Hoffman as hereinbefore set forth shall be a part of the principal debts secured by this instrument and be subject to the same rate and conditions as to interest, but the premiums of insurance and all amounts for taxes and other legal charges upon said property that may be paid by the mortgagees herein named or any of them or any person in interest shall not in any one year exceed in the aggregate two thousand dollars:

Now, in order to secure the full and punctual payment of the said promissory note and such indebtedness as under the provisions hereof may accrue to Shattuck & Hoffman or any person in interest, in capital and interest, at maturity, and attorneys' fees, costs, charges,

and expenses, as hereinafter provided, the said appearer moreover declared that he does by these presents specially mortgage and hypothecate in favor of the said Gilbert M. Richardson and his assigns and in favor of said Shattuck & Hoffman and their assigns and of any and all such person or persons as may hereafter be the holder or holders of the said promissory notes all and singular the following-described property, including the buildings, fixtures, and all improvements and appurtenances situated thereon, to wit:

270 First, a certain tract of land or plantation known as the "Myrtle Grove," situated in the parish of St. Bernard, in State of Louisiana, on the left bank of the River Mississippi, at about two and one-half leagues below the city of New Orleans, measuring about twenty arpents, more or less, front on said river, but on a line measuring at right angles from the intersection of the levee with the lower side measuring nineteen arpents and twelve toises in width, and having on the lower side line, which separates it from the lands of Ducros, a depth of two hundred and thirty-one and one-half arpents, and on the upper side line, which separates it from the property of Gabriel Villeré, a depth of one hundred and ninety-seven and one-third arpents, both side lines diverging four degrees fifty-four minutes and thirty seconds and running to the line of the property of Antoine Michand, which bounds said plantation in the rear, being the property which said F. B. Fleitas acquired from L. E. Lemarie by act passed Jan'y 7th, '82, recorded in Book No. 15, fo. 121, 122, and 123, of the records of conveyances of St. Bernard parish, La.; second, a sugar plantation situated in St. Bernard, parish, at about seven miles below the city of New Orleans, on the left bank of the River Mississippi, measuring about nineteen arpents front on said river by a depth extending up to Lake Borgne, bounded on the upper line by property belonging to Mess. Ereville G. Villere and Denis Villere and on the lower line by the plantation of A. W. Walker, being the property which the said F. B. Fleitas acquired from Mrs. B. Fleitas by act of sale dated Ap'l 28th, 1877, and registered in Book of Conveyances No. 13, p. 194, of the records of St. Bernard parish, Louisiana, and known as

271 the "Corinne" plantation; and also all the engines, boilers, kettles, and other machinery and all other property of whatsoever name or descriptions immovable by destination now on or that may be hereafter placed on or attached to said plantations or either of them.

The said appearer hereby binding himself and his heirs not to alienate, deteriorate, or encumber the same to the prejudice of this mortgage.

And the said appearer further declared and covenanted with the said mortgagees and each and every one of them that he has good right and lawful authority to sell, alien-, convey, and mortgage the property before described; that it is free and clear from all incumbrances; that he has an indefeasible title to the same in fee simple which he will warrant and defend.

And the said appearer further declared that he does by these presents consent, agree, and stipulate that in the event that the

debts or any portion thereof secured or intended to be secured by this act are not punctually paid when due, or on his failure to keep any of the agreements or covenants contained in this act, it shall be lawful for and he hereby authorizes the said mortgagees or either and every one of them or any other holder or holders of said notes or any assigns of said Shattuck & Hoffman of said indebtedness to them to cause all and singular the property hereinbefore described and herein mortgaged to be seized and sold under executory process, without appraisement, to the highest bidder, for cash,
hereby confessing judgment in favor of said mortgagees and
272 of such person or persons as may be the holder or holders of
said promissory notes and all assigns of said Shattuck & Hoffman for the full amount thereof, capital and interest, together with all costs, charges, and expenses whatsoever.

And the said appearer further declared that he does by these presents obligate himself and his heirs to pay and reimburse unto said mortgagees or any such person or persons as may be the holder or holders of said promissory notes all such attorneys' fees, together with all such costs, charges, and expenses, as said mortgagees or any such holder or holders shall or may incur or pay in the event of the non-payment of said promissory notes at maturity or of any legal proceedings being instituted at any time for the protection or preservation of the rights of the said mortgagees or of any future holder of said notes or of any part of said indebtedness to Shattuck & Hoffman; said attorneys' fees, however, to be fixed at 5 per cent. on the amount so in suit and unpaid.

And the said appearer further declared that whereas the said indebtedness is for money advanced by the said mortgagees as a whole or in part to enable said appearer to cultivate the said property during the years 1884, 1885, 1886, 1887, and 1888, and which is required by him for the protection of his crops of sugar and molasses during the said years 1884, 1885, 1886, 1887, and 1888, in order still further to secure the payment of said notes and said indebtedness to Shattuck & Hoffman, he does by these presents specially pledge and pawn to said Gilbert M. Richardson and said Stattuck
& Hoffman the entire crops of sugar and molassses now
273 growing or which may grow on said property during the
years 1884, '5, '6, '7, and '8, and further obligate- himself to gather and put in condition to ship to market as soon as the same can be done the crops of sugar and molasses that he may raise upon or control from the property herein described during the seasons of 1884–'5, 1885–'6, 1886–'7, 1887–'8, 1888–'9 and during any following season or seasons during which any portion of the debt secured or intended to be secured by this act shall remain unpaid, and also obligate- himself to ship the said sugar and molasses from time to time, as soon as the same is gathered and in condition to be sent to market, to said Shattuck & Hoffman, to be sold by them.

It is further understood and agreed that said appearer will not sell or otherwise convey or dispose of said lands so long as this mortgage shall remain in force unless he shall make it a condition precedent to such sale, conveyance, or other disposition that the vendee,

donee, or other person to whom such sale, conveyance, or other disposition is intended to be made shall first assume all the obligations, covenants, and agreements of said appearer to and with said Shattuck & Hoffman, as set forth in said articles of agreement hereinbefore referred to, and also such as are contained and set forth in this act, but in no event is this provision to be construed as in any manner waiving, affecting, or impairing the security herein contained in favor of said Gilbert M. Richardson or any other covenants, obligations, or indebtedness herein provided for and intended to be secured.

274 And it is expressly agreed and understood by and between the parties hereto that the said Shattuck & Hoffman shall have the exclusive right to apply the net proceeds of the sale of all sugar and molasses shipped and all payments of money made to them in any one season to the payment of any indebtedness which may be now or which may hereafter become due to said Shattuck & Hoffman by said appearer upon open account or otherwise, or to the debt, secured and intended to be secured by this act, which may be due or becoming due in that season, or the payments of any demands of said appearer, according to their view of the exigency of the case; that such application may be made at such time and in such manner as they may elect, and that no application of such proceeds of sale or money to the payment of any debt in open account which may at any time be due to the said Shattuck & Hoffman by the said appearer, or to any other account, shall impair, lessen, or prejudice the other debts secured and intended to be secured by this act or the security herein and hereby provided therefor.

It is also agreed and understood that should this mortgage be foreclosed and the land or other properties herein described sold to satisfy the said indebtedness herein secured, then out of the proceeds of said sale the said indebtedness to said Gilbert M. Richardson, whether held by said G. M. Richardson or his assigns, shall be paid by priority over said indebtedness due or to become due to said Shattuck & Hoffman or their successors and assigns.

275 According to the annexed certificate of the recorder of mortgages in and for the parish of St. Bernard, in this State, dated the twenty-second day of January, 1884, hereto annexed and made part of this act, it appears that there are no mortgages, liens, or encumbrances standing in the name of and against the said Francis B. Fleitas on the said property and recorded in his office except the following: On the property hereinbefore firstly described, viz., the mortgage and vendor's lien granted by the said F. B. Fleitas in favor of his vendor in his aforerecited act of purchase to secure the sum of $13,500, now reduced to $9,000, and on the property hereinbefore secondly described: 1st, the mortgage granted by said Fleitas in favor Mrs. Widow B. Fleitas to secure $25,000.00, as per act before N. B. Trist, notary, dated Feb'y 15th, 1879; 2nd, the mortgage granted by him in favor of Lehmann, Abraham & Co. to secure $10,884.07, per act before said notary, Trist, dated March 6th, 1883; 3rd, the pledge and mortgage granted by him in favor of said Lehman, Abraham & Co. to secure $25,000.00, per act

before said notary, Trist, dated March 6th, 1883; 4th, the contract entered into between said F. B. Fleitas and the Babcock and Wilcox Company, by which the former promised to pay the latter the sum of $1,823.55 on the completion of work to be made on the said plantation by the said Babcock and Wilcox Company, recorded May 4, 1883, in Book of Mortgages No. 11, fo. 259.

And also to these presents came and appeared said Gilbert M. Richardson, herein represented by William F. Mellen, of the
276 parish of Orleans, State of Louisiana, and said Shattuck & Hoffman, herein represented by William F. Mellen, of the parish of Orleans, State of Louisiana, who severally, in the same presence, declared that for and in behalf of their said constituents respectively they accept this mortgage, with all its terms and obligations and agreements as hereinbefore set forth. The word "cotton" wherever it occurs in the foregoing deed stricken out and the words "sugar and molasses" inserted in its stead before execution.

Attest: W. A. BRESS.

Thus done and passed, at my office, at New Orleans, in the parish of Orleans, in the presence of me, said notary, and James Simeon and William B. Murphy, competent witnesses, who have hereto subcribed their names, together with me, said notary, and said parties, on the day, month, and year first hereinbefore written.

JAS. SIMEON. F. B. FLEITAS.
W. B. MURPHY. WM. F. MELLEN,
For G. M. Richardson.
WM. F. MELLEN,
For Shattuck & Hoffman.
[SEAL.] BENJAMIN ORY, *Not. Pub.*

I hereby certify the above and foregoing to be a true copy of the original act on file in my records.
New Orleans, June 25th, 1888.
(Signed) BENJAMIN ORY, *Not. Pub.*

277 *Note. Filed June* 29, 1888.

$12,600.00. ST. BERNARD PR., LA., *January 28th*, 1884.

On the first day of January, A. D. 1888 (fixed), I promise to pay to the order of Gilbert M. Richardson, Esq., twelve thousand six hundred dollars at the Louisiana National Bank of New Orleans, La., for value received, with interest, at the rate of eight per cent. per annum, after maturity. The payment of this note and interest is secured by a mortgage, which is recorded in the public records of St. Bernard parish, in the State of Louisiana.

F. B. FLEITAS.

W. F. M. No. 223. Due Jan'y 1, '88.

Written across face:

Ne varietur. Secured by mortgage and crop lien executed before me this day.
New Orleans, January 28th, 1884.
BENJAMIN ORY, *Not. Pub.*

Marked Exhibit B.

Coupon Attached to Note. Filed June 29th, 1888, and Marked Exhibit D.

Note No. 223. $1,008.00.

St. Bernard Pr., La., *Jan'y 28th*, 1884.

On Jan'y first, 1888, without grace, I promise to pay to Gilbert M. Richardson, Esq., or order, at the Louisiana National Bank
278 of N. O., La., one thousand and eight dollars, value received, being an instalment of interest due on that day upon my mortgage note for $12,600 of even date herewith.
F. B. FLEITAS.

Written across face:

Ne varietur. Secured by mortgage and crop lien executed before me this day.
New Orleans, Jan'y 28, '84.
BENJAMIN ORY, *Not. Pub.*

Note. Filed June 29, 1888, and Marked Exhibit C.

$1,200.00. St. Bernard Parish, La., *January 28th*, 1884.

On the first day of January, A. D. 1889 (fixed), I promise to pay to the order of Gilbert M. Richardson, Esq., twelve thousand six hundred dollars, at the Louisiana National Bank of New Orleans, La., for value received, with interest, at the rate of eight per cent. per annum, after maturity. The payment of this note and interest is secured by a mortgage which is recorded in the public records of St. Bernard parish, in the State of Louisiana.
F. B. FLEITAS.

W. F. M. No. 223. Due Jan'y 1, '89 (fixed).

279 *Coupon Attached to Note. Filed June 29th, 1888, Marked Exhibit E.*

Note No. 223. $1,008.00.

St. Bernard Parish, La, *Jan'y 28th*, 1884.

On January first, 1889, without grace, I promise to pay to Gilbert M. Richardson, Esq., or order, at the Louisiana National Bank of N. O., La., one thousand and eight dollars, value received, being an instalment of interest on that day upon my mortgage note for $12,600 of even date herewith.
F. B. FLEITAS.

Written across face:

Ne varietur. Secured by mortgage and crop lien executed before me this day.

New Orleans, Jan'y 28, 1884.

BENJAMIN ORY, *Not. Pub.*

Coupon Attached to Note. Filed June 29th, 1888, Marked Exhibit F.

Note No. 223. $1,008.00.

ST. BERNARD PAR., LA., *Jan'y 28th*, 1884.

On January first, 1888, without grace, I promise to pay to Gilbert M. Richardson, Esq., or order, at the Louisiana National Bank of N. O., La., one thousand and eight dollars, value received, being an instalment of interest due on that day upon my mortgage note for $12,600 of even date herewith.

F. B. FLEITAS.

280 Written across face:

Ne varietur. Secured by mortgage and crop lien executed before me this day.

New Orleans, Jan'y 28, 1884.

BENJAMIN ORY, *Not. Pub.*

Notice of Order of Seizure and Sale. Issued June 30th, 1888.

Circuit Court of the United States, Fifth Circuit, Eastern District of Louisiana.

GILBERT M. RICHARDSON *vs.* F. B. FLEITAS. } No. 11722.

To F. B. Fleitas:

Take notice that payment is demanded of you within three days from the service hereof of the amount specified in the writ of seizure and sale granted on the bill of complaint herein, a copy of which accompanies this notice, with interest and costs; and in default of payment within that delay the property referred to in said bill of complaint will be seized and sold according to law, subject to the order on said bill.

281 A further delay of one day for every twenty miles' distance from your domicil to this city, at which place this court is held, is allowed you by law.

Clerk's office, New Orleans, June 30th, 1888.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

Marshal's Return.

Received June 30, 1888, by the U. S. marshal and on the same day I served a true copy of within notice of seizure and sale and accompanying bill of complaint on F. B. Fleitas, defendant, by

handing the same to him in person and leaving the same in his hands.

Returned same day.

(Signed) R. B. PLEASANTS,
U. S. Marshal,
By D. J. DELANEY,
D'y Marshal.

Petition for Appeal. Filed June 30, 1888.

Circuit Court of the United States, Eastern District of Louisiana.

GILBERT M. RICHARDSON
vs.
F. B. FLEITAS. } No. 11722. Equity Side.

282 To the honorable the judges of said court:

The petition of F. B. Fleitas with respect shows that he has but just been advised that the plaintiffs in this cause have applied to this honorable court for executory process on the alleged mortgage described in the petition on file herein; that the proceeding has in all things been *ex parte* and without any notice to your petitioner or any day in court. Your petitioner, appearing herein for the purpose of this application only and in all things *pro hac vice*, shows unto the court that, feeling aggrieved by said judgment and decree herein and being advised that there is error therein, and that the plaintiffs will insist and treat the same as a final judgment that the court had jurisdiction to make the same and inflict great injury on your petitioners thereby, your petitioner prays for both an appeal and writ of error from said decree or judgment to the Supreme Court of the United States, returnable at the next term thereof, as provided by statute in such case; and whereas in a sworn answer in the cause of Mrs. Corinne Warren Fleitas *et al. vs.* Wm. F. Mellen *et al.*, relating to this same property and mortgage — was sworn that the property involved is more than ample security for said alleged debt and interest and costs, your petitioner prays that such appeal and writ of error operate — a supersedeas on such reasonable bond as the court may fix as provided by law in such cases; and will ever pray, etc.

(Signed) J. R. BECKWITH,
Att'y and Solicitor for F. B. Fleitas, Appeared for the Purpose of this Petition Only.

283 *Order: Appeal and Writ of Error Refused.*

Extract from the Minute Book, April Term, 1888.

NEW ORLEANS, SATURDAY, *June 30th*, 1888.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

GILBERT M. RICHARDSON
vs.
F. B. FLEITAS.

This cause came on to be heard on the petition of F. B. Fleitas, defendant, for an appeal and writ of error herein—T. J. Semmes & W. F. & D. C. Mellen appearing for complainant; J. R. Beckwith for the defendant—and was argued; on consideration whereof it is ordered that the appeal and writ of error prayed for be refused.

Motion to Quash, with Exhibits. Entered and Filed Nov. 19, 1888.

Circuit Court of the United States, Eastern District of Louisiana.

GILBERT M. RICHARDSON
vs.
FRANCIS B. FLEITAS.

284 And now, for the purposes of this motion and no more and for — other purpose whatsoever, Francis B. Fleitas, by J. R. Beckwith, his solicitor, appearing herein *pro hac vice* for the purposes of this motion only and in no manner submitting to the jurisdiction of the court in any particular, but at all times protesting that this court never in any manner has obtained jurisdiction over the said Francis B. Fleitas or any lawful authority to make or enter any order or decree or award any process in this cause against the said Fleitas or any order or process of seizure and sale against the property described in the petition herein, and considering the affidavit and exhibit, attached to and made a part of this motion, in writing, suggesting to the court that this court is, on the face of the papers in this cause and in fact and law, without any lawful authority or jurisdiction whatsoever to grant or allow any process herein for the reasons, amongst others, that the proceeding, if anything, is a proceeding *in rem*, unknown either to law or equity, whereby final decree is sought to be rendered without giving the defendant in decree either a hearing or day in court, contrary to the law of the land as the same governs and controls proceedings in this court under the law and statutes creating this court and defining its powers and jurisdiction.

And, further, that if, by the law defining and limiting the jurisdiction and authority of this court, this court had authority, under any circumstances, to issue or allow executory process or order seiz-

ure and sale the said petitioner has, in and by his showing,
285 as exhibited and on file in this court, made no such showing and presented no such case as will warrant or allow executory process in this or any other court in the State of Louisiana, in that by the terms of the pretended act of mortgage presented to the court by the petitioner matters material, important, and which it was indispensable the court should consider and have made known to it by authentic evidence are not only not presented to the court in any form of evidence whatsoever, but appears on the face of said pretended mortgage to never have been evidenced by authentic act or proof, but are recited to be contained in some document *an* act under private signature, and even that evidence withheld from the court by the petitioner and now for the first time made known to the court as an exhibit to this written motion and made a part hereof.

Considering the premises, it is ordered that the said Gilbert M. Richardson, petitioner in this proceeding, show cause, on Saturday, 24 of November, A. D. 1888, at 11 o'clock a. m., if any he has or can show, why this proceeding and all orders made therein shall not be quashed, vacated, annulled, set aside, and held for naught and any and all further proceedings and process perpetually stayed, and why the court shall not grant such other and further order and relief to this mover as law and justice may require.

And on further making known unto the court that he will make no other and further appearance or pleading herein, at all times believing this proceeding void in law and this court without jurisdiction over the same, that in the event this court shall refuse to grant and allow his said motion to quash and set aside said orders
286 and proceedings herein the said Gilbert M. Richardson do also then and there, at the same time, show cause why the said Francis B. Fleitas shall not be allowed an appeal from said decree and order of seizure and sale (which said appeal the said Fleitas prays in the event the said motion is disallowed) to the Supreme Court of the United States, returnable at the next regular term of that court or as the law directs in such case, such appeal to operate as a supersedeas upon giving the required bond in such amount as the court shall direct

(Signed) J. R. BECKWITH,
Solicitor Appearing pro hac vice for said Francis B. Fleitas.

Memorandum of Agreement Attached to Motion.

This memorandum of agreement, made this 28th day of January, 1884, by and between the commercial firm of Shattuck and Hoffman, of New Orleans, Louisiana, of the first part, and F. B. Fleitas, of St. Bernard parish, of the second part, witnesseth:

1. Said Shattuck and Hoffman will, as agents for said Fleitas, undertake to negotiate for said Fleitas a loan of sixty-three thousand dollars, payable one-fifth annually on the first day of January (fixed), 1885, 1886, 1887, 1888, 1889, respectively, with interest, at

eight per cent. per annum, from date of loan, annually, as it
287 accrues, said interest to be represented and evidenced by coupons or interest notes. Said loan is to be secured by a first mortgage on the Corinne and Myrtle Grove plantations of said Fleitas, in St. Bernard parish, Louisiana.

2. In consideration of the premises said Fleitas will allow and pay to said Shattuck and Hoffman an amount equal to two and one-half per centum (2½%) of said sum of $63,000 as commissions; and he moreover obligates himself to said Shattuck and Hoffman, their assigns and successors, to ship all the crop of sugar and molasses grown or controlled by him during the continuance of said loan and mortgage for sale by said Shattuck and Hoffman on arrival, at their option, for account of said Fleitas, and that his said shipments shall be such that the gross proceeds of the sale thereof shall in no year be less than eighty thousand dollars ($80,000). For the handling of said sugar and molasses — the sale thereof said Fleitas will allow and pay to said Shattuck and Hoffman a commission of two and one-half per cent. on sales and all the ordinary and usual charges incident to such business as established by the customs of merchants in New Orleans; and should said shipments not reach in any one year the amount hereinbefore mentioned said Fleitas will, nevertheless, allow and pay to said Shattuck and Hoffman the same amount of commissions as if said shipments had, in fact, reached the amount hereinbefore provided for.

3. Said Fleitas is at liberty to make a *bona fide* sale of said plantations or either of them at any time after the first day of
288 January, 1886, provided said sale is made after thirty days' notice to said Shattuck and Hoffman, and thus take up and pay off so much of said loan as may be then unpaid; but such payment is only to be made in the months of December, January, or February, and until such payment is made in full said mortgage shall remain in full force and effect and unimpaired by anything herein contained.

4. Notwithstanding said sale may be made or said debt may be paid, said Fleitas will nevertheless ship to said Shattuck and Hoffman all the said crops grown on said plantations in the season next preceding the date of said payment, and said shipments shall not be less than the amount of $80,000, as hereinbefore mentioned.

5. It is estimated that said Fleitas will need of said loan the sum of $25,000 to pay his indebtedness to Lehman, Abraham & Co., and the further sum of $12,000 to pay off the holders of certain mortgage and lien notes. The balance of the net proceeds of said, say, $24,425 will remain in the hands of said Shattuck and Hoffman, to be drawn against by said Fleitas in monthly instalments of, say, $3,500 on the first day of each month from January to July, 1884, inclusive. In addition to this sum of $3,500 to be drawn on the first or other day in said months, he may, if he shall so deem it — in any one of said months, draw the sum of $500, but in such case said $500 is to be deducted from the $3,500 to be drawn in the next succeeding month. So long as said balance of $24,425 shall

remain in the hands of said Shattuck and Hoffman they will
289 allow said Fleitas interest thereon at 5 % *per cent.* per annum, but as each instalment thereof is drawn by said Fleitas interest on the amount so drawn shall cease.

6. Said Fleitas will, for the benefit of the mortgagee of said mortgage, take out such policies of insurance as may be approved by said mortgagee, to the amount of $25,000 *dollars*, on his sugar-house, assign them to said mortgagee as may be required, and will keep them alive.

7. Said Shattuck and Hoffman will, in accordance with the customs of the merchants of New Orleans, effect insurance upon said sugar and molasses in transit from said plantations to New Orleans and while in warehouse in said city.

8. Said Fleitas will furnish abstract of title to said plantations, as may be required by said Shattuck and Hoffman, at his own expense.

9. In the event of an overflow from the Mississippi river sufficient to imperil or threaten or actually to destroy the crops of 1884 on said plantations or either of them to a material extent, the monthly instalment of $3,500 each provided for in article fifth hereof will not be drawn for by said Fleitas or paid by said Shattuck and Hoffman.

(Signed) SHATTUCK & HOFFMAN.
F. B. FLEITAS.

Witness:
(Signed) D. A. KENNEDY.

Affidavit of F. B. Fleitas Attached to Motion.

STATE OF LOUISIANA,
Parish of Orleans, Eastern District of Louisiana.

290 Francis B. Fleitas, being duly sworn, deposeth and saith that the document annexed to this affidavit and made part hereof as Exhibit A is an original of the contract, under private act and signature, made part of the mortgage act made part of the petition, and upon which the alleged order of seizure and sale is made, in the proceeding filed in the circuit court of the United States for the fifth circuit and eastern district of Louisiana, entitled "Gilbert M. Richardson *vs.* Francis B. Fleitas," this deponent, and that the signatures attached thereto are the genuine signatures of the said several parties executing said contract, and that the same was at all times considered a part of said mortgage, not by public act, but containing a confidential relation between the parties to said mortgage act made by private act, so that it should not become a public record, open to the inspection of all parties, and that for this reason the said act of mortgage was by the consent of all parties thereto made only in part authentic by public act, and was, in fact, made to cover advances to be made, as appears by said contract annexed, and that there never was any authentic proof by public

act that any such advances were made, to the knowledge of this deponent; and further saith not.

(Signed) F. B. FLEITAS.

Subscribed and sworn to before me Nov. 7, 1888.

(Signed) WM. GRANT,
Com'r United States Circuit Court, Eastern District La.

291 *Marshal's Return.*

Received Nov. 20, 1888, by the U. S. marshal, and on the same day and date I served a true copy of the within motion on W. F. & D. C. Mellen by leaving the same at their office, in the hands of James McCann, office boy.

(Signed) GEO. MOORMAN,
U. S. Marshal,
Per T. M. MOORMAN,
Deputy U. S. Marshal.

Ret. Nov. 21, 1888.

Motion of Complainant to Strike from Files. Filed Nov. 24, 1888.

U. S. Circuit Court.

GILBERT M. RICHARDSON
vs.
FRANCIS B. FLEITAS. } No. 11722.

Now comes the plaintiff and moves the court to strike from its files the motion made by the defendant on the — day of November, 1888, no such motion being allowed by the rules of this court nor by the laws of Louisiana.

292 *Motion to Quash Refused and Suspensive Appeal Granted and Reference to Master.*

Extract from the Minute Book, November Term, 1888.

NEW ORLEANS, SATURDAY, *November* 24, 1888.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

GILBERT M. RICHARDSON
vs.
F. B. FLEITAS. } No. 11722.

Proceedings before His Honor the District Judge.

This cause came on to be heard on the motion herein filed by the defendant to quash the proceedings and orders herein and for an appeal, and also upon the motion of the complainant to strike from the files—T. J. Semmes & W. F. & D. C. Mellen appearing for complainant, J. R. Beckwith for the defendant—and was argued by counsel for the parties respectively and submitted. On consider-

ation whereof it is ordered that said motion to quash and to strike from the files be refused, and that said motion for a suspensive appeal be granted upon the defendants giving bond with security in such amount as may be fixed by the court, and that refer-
293 ence be made to J. W. Gurley, Esq., as master, to take evidence and testimony and report to the court as to the facts which will enable the court to determine the amount of bond required for a suspensive appeal.

Notice. Issued 26 *Nov'r*, 1888.

U. S. Circuit Court, Eastern Dist. La.

Before J. W. Gurley, Master, &c.

G. W. RICHARDSON
vs
F. B. FLEITAS.

J. R. Beckwith, Esqr., solicitor for defendant:

Please take notice that I have assigned Thursday, 29th Nov., 1888, at 11 o'clock a. m., for hearing the above cause on the matters of reference, at U. S. att'y's office, custom-house building.

New Orleans, 26 Nov., 1888.

Attest:

(Signed) J. W. GURLEY, *Master, &c.*

Marshal's Return.

Received Nov. 26, 1888, by the U. S. marshal, and on the same day and date I served a true copy of the within motion on J. R. Beckwith by handing the same to him in person.

Ret. Nov. 27, '88.

(Signed) GEO. MOORMAN,
U. S. Marshal,
Per T. M. MOORMAN,
D'y U. S. Marshal.

294 *Report of Master of Facts for Purpose of Fixing Amount of Appeal Bond. Filed Dec.* 6, 1888.

G. M. RICHARDSON
vs.
F. B. FLEITAS. } No. 11722.

To hon. the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

The undersigned master was ordered to take testimony and report as to the facts which will enable the court to determine the amount of bond to be required of the defendant for a suspensive appeal. For that purpose he has held two sessions and, assisted by counsel of the respective parties, has taken the testimony, herewith

returned, of five witnesses. From that testimony and the record the master reports the facts as follows:

On the 29th June, 1888, the plaintiff filed his bill asking that certain property on which he claimed a mortgage by act importing confession of judgment be seized and sold to satisfy his demand; the amount claimed as due, with interest claimed, calculated to 10th Dec'r inst., and 5% attorney's fees added, is $30,675.96.

On the 23 Nov., 1888, the marshal, under an order of seizure
295 and sale, took possession of and still holds the property. In 1886 the sugar-house on the place was destroyed by fire and in consequence no sugar was made and no cane was planted that year nor subsequently. The only cane now on the place is 175 acres of stubble.

In 1887 seventy-five acres in cabbages, fifty barrels of potatoes, eight or ten acres in artichokes, and some corn were planted.

In 1888 seventy-five acres in cabbages and sixty or seventy acres in artichokes were planted.

The average cost in carrying on the place in 1887 and 1888 was, according to testimony of Boutte, from $200 to $250 per mos. Within the last year a large and substantial levee, taking in seventy or eighty additional acres of land from the front batture, has been built.

The property as it now stands, exclusive of that immov-ble merely by destination, is of the value of $32,500.00.

The bank book of J. E. Fleitas shows that from Mar. to Sept., 1888—seven months—he deposited in bank $12,923.85, of which $2,006.80 was on his private account and the balance, $10,917.05, was on the plantation acc't. There was checked out a total of $11,486.75. As this sum was $569.70 *is* in excess of the amount deposited from the plantation, it should be charged to Mr. Fleitas,
which, with the balance in bank, makes up his private de-
296 posit of $2,006.80. The balance checked for, $10,917.05, must be charged to the plantation, making the average expense per month $1,559.58 for the seven months in 1888. Mr. J. E. Fleitas testifies that all the money derived from the plantation was deposited in bank and all the expense of carrying it on was checked for; that the bank books show the receipts and expenditures, and that no other books were kept.

Protest and exceptions were filed by the defendant to proceeding under the order of reference herein and are herewith returned.

The bill of Harry Langford, Esqr., for services as stenographer, amounting to $12.95, was paid, $9.80 by the plaintiff and $3.15 by the defendant.

The master asks that he be allowed fifty dollars for his services herein, and that the court make appropriate order for its payment as costs.

Respectfully submitted.

(Signed) J. W. GURLEY, *Master, &c.*

297 *Submission of Master's Report.*

Extract from the Minute Book, November Term, 1888.

NEW ORLEANS, THURSDAY, *December* 6, 1888.

Court met pursuant to adjournment.
Present: Hon. Edward C. Billings, district judge.

GILBERT M. RICHARDSON
vs.
FRANCIS B. FLEITAS. } No. 11722.

This cause came on this day to be heard on the master's report of facts required for the purpose of fixing the amount of bond for a suspensive appeal herein—W. F. & D. C. Mellen & T. J. Semmes appearing for complainant; J. R. Beckwith for the defendant—and was argued by counsel and submitted, when the court took time to consider.

Order on Master's Report of Facts as to Appeal Bond, etc. Entered and Filed December 7, 1888.

Circuit Court of the United States, Eastern District of Louisiana.

298 GILBERT M. RICHARDSON
vs.
F. B. FLEITAS. } No. 11722.

On the master's report of facts required for the purpose of fixing the amount of bond for a suspensive appeal.

This cause came on to be heard and was argued by counsel; whereupon the court, on consideration thereof, and further reconsidering the whole matter with reference to the order or decree awarding executory process herein and the defendant's applications for appeal therefrom, doth now order that so much of the order of the 29th of June, A. D. 1888, awarding executory process herein as directs the marshal to stay the sale of the property directed to be seized till the further orders of the court be stricken out, and that all orders made subsequently to the date of defendant's application for an appeal on June 30, A. D. 1888, except the order of reference to the master to report the facts upon which the amount of bond could be determined and fixed, be revoked, and that an appeal to operate as a supersedeas be allowed to said defendant *nunc pro tunc* as of said 30th day of June, 1888, according to his petition then presented, on his giving bond as required by law, with good and solvent surety, in the sum of one thousand dollars.

And it is further ordered that the marshal, on the filing of such bond, release from seizure the property he has seized herein,
299 and that the exceptions to the order of reference be overruled, and that the master be allowed a fee of fifty dollars for his services, to be taxed as costs herein.

Bond for Appeal. Filed December 7, 1888.

UNITED STATES OF AMERICA:

Know all men by these presents that we, Francis B. Fleitas, as principal, and Joseph Albrecht, as surety, are held and firmly bound, jointly and severally, unto Gilbert M. Richardson in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said Gilbert M. Richardson, heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us, by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 8th day of December, in the year of our Lord eighteen hundred and eighty-eight.

Whereas the said Francis B. Fleitas having heretofore, to wit, on the 7th day of December, 1888, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the 29th day of June, 1888, by the circuit court of the
300 United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of Gilbert M. Richardson *versus* the said Francis B. Fleitas, No. 11722 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden Francis B. Fleitas shall prosecute his said appeal to effect and shall answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) F. B. FLEITAS. [L. S.]
JOSEPH ALBRECHT. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) J. R. BECKWITH.

Bond approved December 8, 1888.
(Signed) EDWARD C. BILLINGS, *Judge.*

UNITED STATES OF AMERICA,
Eastern District of Louisiana, } *ss:*

Personally appeared Joseph Albrecht, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, State of Louisiana, and is worth the full sum of five thousand dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) JOSEPH ALBRECHT.

Subscribed and sworn — before me this 8th day of December, 1888.

(Signed) WM. GRANT,
Commissioner U. S. Circuit Court,
Eastern District of Louisiana.

301 *Act of Mortgage by F. B. Fleitas in Favor of Albert Bertus, Marked Complainant No.* 10.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans.

Be it known that on this 29 day of June, in the year of our Lord 1871, and in the 95th of the Independence of the United States of America, before me, Amedee Ducatel, notary public in and for the city and parish of Orleans, State of Louisiana, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. Francis Barthelemy Fleitas, residing in this city, who declared and acknowledged himself to be well and truly indebted unto Mr. Alfred Bertus, of this city, in the full sum of twenty-eight thousand dollars; for the reimbursement whereof the said F. B. Fleitas has furnished a promissory note for the sum of twenty-eight thousand dollars, dated this day, stipulating to bear interest, at the rate of eight per cent. per annum, from maturity until final payment and payable one year after date; which note, marked and signed *ne varietur* by me, the notary undersigned, to be herewith identified, was handed over and delivered to the said Alfred Bertus, here present, who acknowledges said delivery.

Now, in order to secure the full and punctual payment of the said note at maturity, together with the payment of all interest
302 and costs, even lawyers' fees, at the rate of two per cent. on the amount of said note, in case of judicial proceedings to enforce the payment thereof, the said Francis B. Fleitas does hereby affect, mortgage, and hypothecate specially in favor of the said mortgagee and to inure to the use and benefit of any and all future holder or holders of the said note which is accepted by the said mortgagee—

A certain sugar plantation situated in the parish of St. Bernard, at about seven miles below the city of New Orleans, on the left bank of the River Mississippi, measuring about nineteen arpents front on said River Mississippi by a depth extending up to Lake Borgne, bounded on the upper line by a property belonging to Messrs. Ereville and Denis Villere and on the lower side by the plantation of A. W. Walker, together with the buildings and improvements thereon, and also the horses, mules, cattle, tools, and implements of husbandry thereunto belonging or in anywise appertaining, being the same acquired by the said Francis B. Fleitas at the sale made by the sheriff of said parish of St. Bernard on the 9th day of August, 1870, in the suit of Wm. Manuel Cruzat *vs.* Edmund Villere and others, No. 625 of the docket of the second judicial district court of the State of Louisiana in and for the said parish of St. Bernard. As additional security, the said Francis Barthelemy Fleitas does hereby confess judgment, promising and binding himself not to sell, alienate, or encumber the said property to the prejudice of the present act, furthermore binding himself to keep the buildings existing on said plantation constantly insured against loss by fire and to transfer

the policy of said insurance unto the said mortgagee until the
303 full and final payment of the aforesaid note, hereby consenting and agreeing that the aforenamed mortgagee shall have the right to transfer such policy to any future holder of said note, and that in case of the failure or neglect of him, the said Francis Barthelemy Fleitas, to effect said insurance any holder or holders of said note shall have the right to do so, and the reimbursement of all sums paid for that purpose shall be secured by the present mortgage. The said F's B. Fleitas declares that there is no other mortgage standing in his name and recorded against the above-described plantation than the one he granted by his aforesaid act of purchase to secure the sum of eleven thousand five hundred and fifteen dollars and thirty-five cents, of which declarations the aforenamed mortgagee acknowledges to be satisfied, exonerating the notary, undersigned, from all responsibility whatever.

And now personally appeared Mistress Corinne Warren, wife, of lawful age, of the said Francis Barthelemy Fleitas and by him duly authorized and assisted, who, after the undersigned, notary, had explained to her verbally the nature and purport of the foregoing act of mortgage from her said husband to the said Alfred Bertus, declared that she is desirous of releasing in favor of the said mortgagee the plantation hereinbefore described from the matrimonial, dotal, paraphernal, and other rights and from all claims, mortgages, or privileges to which she may be entitled, whether by virtue of her marriage with the said F. B. Fleitas or otherwise; whereupon the undersigned, notary, did explain verbally to the said Mrs. Fleitas, out of the presence of her said husband, the nature of
304 her rights, which are here detailed, to wit, the wife has a legal mortgage on the property of her husband in the following cases: 1st, for the restitution of her dowry and for the reinvestment of the dotal property sold by her husband and which she brought in marriage, reckoning from the celebration of the marriage; 2nd, for the restitution and reinvestment of the dotal property which came to her after the marriage, either by succession or donation, from the day the succession was opened or the donation perfected; 3rd, for the reimbursement of the amount of her paraphernal property alienated by her and received by her husband or otherwise disposed of for his individual interest; 4th, to indemnify her for debts which she may have contracted with her husband; and, 5th, for the donations which may have been made to her by her husband on account of their marriage; and that by renouncing said rights on the plantation hereinbefore described and mortgaged she would deprive herself irrevocably of all recourse thereon.

And the said Mrs. Fleitas did thereupon declare to me, notary, that she fully understood the nature and extent of her said rights on the property of her said husband, and that she nevertheless did persist in her intention of renouncing the same in favor of said mortgagee on the plantation hereinbefore described and mortgaged; and the said F. B. Fleitas being now present, assisting and authorizing his said wife in the execution of these presents and consenting thereto, she, the said Mrs. Fleitas, did again declare that she did and

does hereby make a formal renunciation and relinquishment of all her said rights and mortgages on the plantation hereinbefore mortgaged in favor of the said mortgagee, binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

305 Thus done and passed, in my office, at the city of New Orleans aforesaid, in the presence of Messrs. Amedee Ducatel and Paul Ducatel, of this city, competent witnesses, who hereunto sign their names with the said parties and me, the said notary.

(Original is signed) F. B. FLEITAS.
M. CORINNE FLEITAS.
ALF. BERTUS.
PAUL DUCATEL.
A. DUCATEL, JR.
AMEDEE DUCATEL, *Not. Pub.*

A true copy.
New Orleans, April 6th, 1889.

[L. S.] (Signed) AMEDEE DUCATEL,
Notary Pub.

Testimony of Thomas Appleton, Charles A. Phillipi, F. B. Fleitas, Mrs. M. C. W. Fleitas, Albert Estopinal, and J. J. Warren, taken and returned by Henry Langford, examiner herein.

United States Circuit Court, Eastern District of Louisiana.

MARY CORINNE WARREN FLEITAS, Wife of Francois B. Fleitas,
vs.
WILLIAM F. MELLEN *et al.* } No. 11702.

306 Testimony taken on behalf of the complainant, under the 67th rule of practice of the courts of equity of the United States, before Henry Langford, notary public, special examiner, duly appointed and qualified to take the depositions of witnesses on behalf of the complainant in the above-entitled cause, at the city of New Orleans, this 23rd day of March, 1889.

Present: Rouse & Grant, Esqrs., solicitors for the complainant; James R. Beckwith, Esqr., solicitor for the complainant; Thomas J. Semmes, Esqr., solicitor for the defendants.

And thereupon the complainants proceeded to offer evidence as follows, viz:

First. An attested copy of the marriage contract passed before Magner, notary public, at the city of New Orleans, on the 6th day of February, A. D. 1868, between Francois Barthelemy Fleitas and Miss Mary Corinne Warren, marked as Exhibit 4 and annexed to the answer of Richardson, a defendant.

Second. The notarial act passed before Anatole Anthony Kerr, notary public, on the 7th day of January, 1882, between Louis Emile Lemarie and Francois B. Fleitas, being the act of sale of the Myrtle Grove plantation, and marked in Exhibit "Complainant No. 1."

Third. The deed made by Albert Estopinal, sheriff of the parish of Saint Bernard, dated 9th of February, 1874, conveying to Francois B. Fleitas the Corinne plantation, referred to in the bill of complaint and marked in Exhibit "Complainant No. 2."

Fourth. The original act passed before Nicholas Browse Trist, notary public, on the 28th of April, 1877, whereby Mrs. Mary
307 Modist Dorethea Cucullu, widow of Bartholemy Fleitas, conveyed the Corinne plantation to Francois B. Fleitas, and marked in Exhibit "Complainant No. 3."

And at the same time and place THOMAS APPLETON was produced as a witness on behalf of the complainant, who, being first duly sworn, deposes and says:

By Mr. ROUSE:

Q. What is your age?
A. 71 years.
Q. Where do you reside?
A. I reside in Massachusetts.
Q. Were you in the city of New Orleans in the month of February, 1868?
A. Yes, sir; I was.
Q. Did you at that time know Francois B. Fleitas?
A. I did.
Q. Did you know the lady who afterwards became his wife?
A. Yes, sir; very well.
Q. You were acquainted with both of them at that time?
A. Yes, sir.
Q. It appears that a marriage contract was entered into between and by the same parties by notarial act, a copy of which I now hand you, being Exhibit "4" annexed to the answer of Richardson, in which you appear to be one of the subscribing witnesses.
A. Yes, sir; that is right.
Q. Do you remember anything about the occasion?
308 A. Yes, sir; I did recollect. It was one of the coldest nights of the season. It was on the 6th of February, 1868.
Q. For what purpose did you go to the notary with the parties?
A. It was a marriage ceremony.
Q. Did you subscribe the act as a witness?
A. I did.
Q. Do you remember anything about any money passing?
A. No, sir; there was said to be $20,000. It goes very far back. I understood it was a marriage contract at which $20,000 was to be paid over, as I understood, at the time.
Q. Do you remember anything about *their* being a contract and a passing over of the money?
A. I think I do. I would have to go back 21 years, and it is pretty hard to recollect. I knew at the time that $20,000 was paid, or I supposed it was paid.
Q. Were you present during the time that the act was being exe-

cuted—that is, the marriage contract? I mean were you present in the notary's office.

A. I cannot recollect that. I recollect the Jesuits' church and I recollect signing as a witness.

Q. This is a matter of contract and not the marriage ceremony. It is a contract that preceded the marriage ceremony?

A. If I signed it I was there. I could not sign anything if I was not there. My name is there and I put it there.

Q. Have you ever examined the original act since that date?

A. No, sir; I have not been in New Orleans regularly since that time.

309 Cross-examination.

By Mr. SEMMES:

Q. Do you remember ever having been at the office of this notary, Mr. Magner?

A. No, sir.

Q. You do not remember ever having seen any money passing between the parties that you remember?

A. No, sir; it is so long ago.

CHARLES A. PHILIPPI, produced, sworn, and examined as a witness on behalf of the complainant, deposes and says:

By Mr. ROUSE:

Q. What is your age?

A. I am 50 years old.

Q. Did you know Mr. Francois B. Fleitas and his wife at the time of their marriage and before?

A. I did.

Q. Your name appears as an attesting witness to the marriage contract made between them on the 6th of February, 1868?

A. Yes, sir.

Q. Do you remember anything of that occasion?

A. Yes, sir; I do.

Q. Will you state what you remember?

A. The contract took place at Mr. Warren's house, the father of Mrs. Fleitas. The act was executed right there and was signed there.

Q. The notary was there, I suppose?

310 A. The notary was there, and there were $20,000 in money handed or counted by Mr. Warren to the notary—counted by him and handed to Mrs. Fleitas.

Q. There, at that time, and on that occasion?

A. Yes, sir. I was there, and I saw Mrs. Fleitas getting the $20,000, and I saw Mr. Fleitas getting that money from his wife.

Q. Have you ever since that time looked at the original act?

A. Yes, sir; I did.

Q. Have you looked at the signatures of the witnesses?

A. Yes, sir. I saw mine there a few minutes ago.

Q. And that is the act to which you referred?
A. Yes, sir.
Q. Where was the house of the father of Mrs. Fleitas situated—in what parish?
A. On Jackson street, in the city of New Orleans; I think No. 255, if my memory serves me right; near the corner of St. Charles.

Cross-examination.

By Mr. SEMMES:

Q. Were you an intimate friend of the family?
A. I was at that time.
Q. You say it was counted out in bank bills?
A. Yes, sir; I think they were $500 bills.
Q. They were handed by Mr. Warren to the notary?
A. Handed to the notary, I think, by Mr. Warren; handed to Mrs. Fleitas, and then Mr. Fleitas got the money.
Q. You saw her handing it to him?
A. Yes, sir.
311 Q. Did she say anything at the time she handed it to him?
A. I cannot say that. There was something said at the time, I suppose, because of the act.
Q. Did Mrs. Fleitas say, "Just hold this for me until to-morrow," or anything like that?
A. No, sir: there was nothing like that.
Q. You do not know what became of the money after that?
A. No, sir; it is not for me to say.

Mr. THOMAS APPLETON here states that he desires to be recalled in order to explain or correct his testimony as follows:

As I stated, I could not recollect Mr. Magner, the notary, being present; but after I have read this over (the marriage contract) I now recollect of the notary's being there at Mr. Warren's house and the money being paid. I cannot say that there were $20,000 counted out, but I recollect the bill, as the thing comes back to my mind. I had been trying to figure up in my mind my presence at Mr. Magner's office. I did not recollect of ever being at Mr. Magner the notary's office; but, after reading the act over, I remember it all now. 21 years is a good while back, unless you have something before you to refresh your memory.

F. B. FLEITAS, produced, sworn, and examined as a wit-
312 ness on behalf of complainant, deposes and says:

Mr. Semmes, solicitor for the defendant-, objects to the admissability of any evidence coming from Mr. F. B. Fleitas, he being the husband of the complainant, and therefore not competent as a witness for her.

By Mr. BECKWITH:

Q. You remember the occasion of the marriage contract to which the testimony of the two last witnesses was referred?

A. Yes, sir.

Q. Where was the contract signed?

A. At 255 Jackson street.

Q. Do you remember who was present at that time?

A. Yes, sir.

Q. Who was present?

A. Mr. J. J. Warren and his wife; Miss Corinne Warren, now my wife; Mr. Thomas Appleton and his wife; Miss Lizzie A. Gardner, Mr. Philippi, and the notary. That is as far as I can recollect of the company that was there.

Q. For what purpose was the notary brought there to the house?

A. To make the marriage contract.

Q. Was it to make the marriage contract that is offered in evidence here?

A. Yes, sir.

Q. When was that contract executed?

A. On the 6th of February, 1868.

Q. On that occasion?

A. On that occasion.

313 Q. Do you know the terms and contents of that contract?

A. Yes, sir.

Q. Are the recitals made in it true?

A. Yes, sir.

Mr. Semmes objects to the method of propounding the questions.

Q. Was any money passed on that occasion?

A. Yes, sir.

Q. State how much and how it was transferred.

A. My wife handed me $20,000 that had been handed to her by the notary.

Q. Do you know how the notary got it?

A. Mr. Warren handed it to the notary.

Q. You saw it done?

A. Yes, sir; I saw it and had possession of it.

Q. What became of that money?

A. I used it.

Q. Was that the $20,000 referred to in this marriage contract?

A. Yes, sir.

Q. How long did you have the possession or control of that money?

A. For two years, I believe. I had to use it afterwards in my business. I invested it in bonds at first, and then I used it in my business after that.

Q. At the time of the institution of the suit in the parish of St. Bernard for the separation of property had you, prior to that time, paid or returned that money to your wife?

314 A. No, sir.

Q. At the time of the institution of the suit and the judgment on it was that sum due by you to your wife?

A. Yes, sir; I owed my wife that money.

Q. Had there been any proceedings prior to the proceedings in the parish of St. Bernard taken for the separation of property at any other time or any proceedings than those upon which the judgment was rendered?

A. I do not understand your question clearly.

Q. Was there ever but one proceeding in court between you and your wife relating to the separation of property or this $20,000?

A. No, sir; there was not.

Mrs. Mary Corinne Warren Fleitas, complainant, being duly sworn on her own behalf, deposes and says:

By Mr. Rouse:

Q. You are the complainant in this case, are you not?

A. Yes, sir.

Q. You are the wife of Francois B. Fleitas?

A. Yes, sir.

Q. Do you remember anything about the marriage contract that was executed between you and your husband, in 1868, prior to your marriage?

A. Yes, sir; I remember the marriage contract and the money that Mr. Magner handed to me and that I handed to Mr. Fleitas.

315 Q. Do you know how much money that was?

A. They told me it was $20,000.

Q. And you believed it to be $20,000?

A. Yes, sir; I believed it to be that.

Q. When was that money handed over—at the time of the execution of the contract?

A. Yes, sir; at that time.

Q. Now, has that money ever been paid back to you—in money?

A. No, sir; never.

Q. Have you ever taken any proceedings in court to get it back prior to these proceedings in the parish of St. Bernard?

A. No, sir.

Q. Do you know how the notary got the money—who handed it to him?

A. My father handed it to him.

Q. Your father, Mr. Warren?

A. Yes, sir; Mr. Warren handed it to him.

Q. The notary handed it to you and you handed it to Mr. Fleitas?

A. Yes, sir; the notary handed it to me and I handed it to Mr. Fleitas.

No cross-examination by Mr. Semmes.

316 Mr. Beckwith, for complainant, offers in evidence a certified copy of the suit No. 294 of the 24th judicial district court for the parish of St. Bernard, being the suit entitled "Mrs. Mary

Corinne Warren, wife of F. B. Fleitas, *versus* F. B. Fleitas," as contained and set forth in the transcript filed on the removal of this case from the civil district court for the parish of Orleans to the circuit court of the United States, eastern district of Louisiana.

Mr. Semmes, on behalf of the defendants, objects to the introduction of the testimony given in the above-offered case as testimony in this case.

The complainant also offers in evidence the judgment and *fi. fa.* in the case of Mary Corinne Warren Fleitas against Francois B. Fleitas, her husband, No. 294 of the docket of the 24th judicial district court for the parish of St. Bernard, and the sheriff's deed conveying the land in question to the complainant, together with all the certificates and endorsements thereon, to be produced on the trial of this cause.

And, there being no more witnesses present, the examination was adjourned to Wednesday, March 27th, 1889, at 3 o'clock p. m.

NEW ORLEANS, WEDNESDAY, *March 27th*, 1889.

Mrs. MARY CORINNE WARREN FLEITAS, Wife, etc.,
vs.
WILLIAM F. MELLEN *et al.* } No. 11702.

Testimony resumed this day, at 3 o'clock p. m., on behalf of the complainant.

317 Present: Rouse & Grant, Esqrs., solicitors for the complainant; Thomas J. Semmes, Esqr., solicitor for the defendants.

Mr. Semmes, solicitor for the defendants, offers in evidence the certificate of the bankruptcy of F. B. Fleitas. Said certificate was filed in the cause on the 19th of May, 1888, and marked in Exhibit "M."

Mr. Grant, solicitor for the complainant, objects to the introduction of the certificate in bankruptcy on the ground that it is incompetent evidence, not being offered by the person entitled to make the plea of a discharge in bankruptcy.

ALBERT ESTOPINAL, a witness produced, sworn, and examined on behalf of the complainant, deposes and says:

By Mr. ROUSE:

Q. Where do you reside?
A. In the parish of St. Bernard.
Q. Were you ever the sheriff of that parish?
A. Yes, sir; I was.
Q. When?
A. I was sheriff from 1873 to 1877.
Q. Do you remember making the sale of the property described in the deed made by you, a copy of which has been offered in evidence in this cause, marked "Complainant No. 2," known as the Corinne plantation?
A. Yes, sir; I made the sale of that property in March, I think it was, 1874.

318 Q. The recorder of the parish of St. Bernard has made an entry upon the record of the inscription of the marriage contract entered into between F. B. Fleitas and Mary Corinne Warren on the 6th of February, 1868, recorded in Book 6 of Mortgages in the parish of St. Bernard as follows, to wit:

"Erased, annulled, and cancelled by virtue of an order of the sheriff of the parish of St. Bernard, dated this 18th March, 1874, requesting and authorizing me to deface the mortgage herein granted by F. B. Fleitas to his wife, Mary Corinne Warren, to secure her matrimonial, dotal, and paraphernal rights, etc.; said order hereto annexed for reference.

Parish of St. Bernard, March 18th, 1874.

PHILIP TOCA, *Recorder.*"

Did you give any such direction; if so, why?

Mr. Semmes, for the defendants, objects to any parole evidence to contradict the endorsement of the recorder on the records of his office.

A. No, sir; I did not; I do not remember ever having given such instructions.

Q. What direction did you give with regard to the erasure of the mortgages against the Corinne plantation because of the sale that you had made?

A. The order was to erase all mortgages against the Corinne plantation, but there was no such mortgage as that of Mrs. Mary Corinne Warren upon it.

Q. What do you remember upon that subject?

319 A. I remember distinctly that there had been a renunciation made in favor of Mrs. Bartholemy Fleitas. I was very familiar with Mr. Fleitas' business at that time.

Q. By whom was that renunciation made?

A. By Mrs. F. B. Fleitas.

Q. Was that contained in the mortgage under which the sale was made?

Mr. Semmes, for the defendants, objects to this evidence. The matter is of record, and parole evidence is not admissable.

A. Yes, sir.

Cross-examination.

By Mr. SEMMES:

Q. When did you cease to be sheriff?

A. In 1876—that is, on the first of January, 1877, my successor qualified.

Q. And this sale which was made in 1874 to which you refer was made 15 years ago?

A. Yes, sir.

Q. Have you any distinct memory or recollection of what instructions you gave to the recorder at all?

A. No, sir.

By Mr. ROUSE:

Q. Did Mrs. Fleitas, wife of F. B. Fleitas, give you any directions about cancelling a mortgage—her mortgage or any other mortgage?

A. No, sir.

320 Q. Please look at the photograph now exhibited to you, marked "Complainant No. 5," and state whether you knew Philip Toca and what office he held.

A. Yes, sir; I knew Philip Toca; he was the recorder of the parish of St. Bernard.

Q. You knew his handwriting?

A. Yes, sir.

Q. Had you seen him write?

A. Yes, sir.

Q. Look at his signature as photographed upon the margin of this document, "Complainant No. 5," and state whether the original of that was his signature.

A. Yes, sir. I went to school with him. That is his handwriting and that is his signature.

Q. State whether the whole of the inscription upon the mortgage reading, "Erased, annulled, and cancelled by virtue of an order of the sheriff of the parish of St. Bernard," etc., is in his handwriting or not.

A. Yes, sir; everything is in his handwriting.

It is admitted that the document marked "Complainant No. 5" is a photograph of the inscriptions of the records of the mortgage office in the parish of St. Bernard, Louisiana, in Book of Mortgages No. 6, of the marriage contract between Francois Barthelemy Fleitas and Mary Corinne Warren, now his wife, entered into on the 6th of February, 1868, before —— Magner, notary public in the

321 parish of Orleans, and of the marginal inscription upon said record made by Philip Toca, recorder.

J. J. WARREN, a witness produced, sworn, and examined on behalf of the complainant, deposes and says:

By Mr. ROUSE:

Q. Where do you reside?

A. At the present time in the parish of St. Bernard, on Mr. Fleitas' place.

Q. Are you related to Mrs. F. B. Fleitas; if so, how?

A. Yes, sir; she is my daughter.

Q. Do you know anything about a marriage contract entered into between Mr. F. B. Fleitas and your daughter on the 6th of February, 1868?

A. Yes, sir.

Q. Were you present at the execution of the contract?

A. Yes, sir.

Q. State what you know about what took place. Was there any money transferred on that occasion?

A. Yes, sir. We had that marriage contract before the notary, Magner. I believe I gave my daughter $20,000. I handed the money to the notary to count before witnesses. It was counted and handed to my daughter.

Q. What did she do with it?

A. She handed it to Mr. Fleitas.

Q. Mr. Fleitas was about to become her husband?

A. Yes, sir.

Q. And he is now her husband?

A. Yes, sir.

322 Q. The contract states that the donation was made by yourself and your wife, Mrs. Warren. What was the fact?

A. Well, the notary had made a mistake there, I think. I furnished the money myself.

Q. So your wife took part in the act?

A. Yes, sir.

Q. Who were present on that occasion?

A. There was Mr. Appleton and Mr. Philippi. I do not recollect all the persons present.

Q. There were other persons present?

A. Yes, sir; the act shows the witnesses that were there.

Cross-examination.

By Mr. SEMMES:

Q. At the time Mr. Fleitas married your daughter was he a member of your firm?

A. No, sir.

Q. Your firm was that of Warren & Crawford?

A. Yes, sir.

Q. When did he become a member of your firm?

A. It was shortly after that; I do not recollect the date.

Q. It was shortly after?

A. Yes, sir.

Q. When he became a member of the firm did he put this $20,000 into the business of the firm?

A. No, sir.

Q. What became of the $20,000—do you know? Did you ever get any part of it?

A. No, sir.

323 Complainant offers in evidence the marginal inscription upon the marriage contract, being Exhibit No. 4 annexed to the answer of Richardson, a defendant, reading as follows:

"Erased, annulled, and cancelled by virtue of a judgment rendered by the U. S. circuit court, Judge E. C. Billings presiding, signed April 25th, 1877.

PHILIP TOCA, *Recorder.*"

And another marginal inscription, to wit:

"Erased, annulled, and cancelled by virtue of an order from the

sheriff of the parish of St. Bernard, dated this 18th March, 1874, requesting and authorizing me to deface the mortgage herein granted by F. B. Fleitas to his wife, Mary Corinne Warren, to secure all matrimonial, dotal, and paraphernal rights, etc.; said order hereto annexed for reference.

Parish of St. Bernurd, March 18th, A. D. 1874.

PHILIP TOCA, *Recorder.*"

Also the certificate upon the said copy of the marriage contract by J. R. Ducros, deputy clerk and *ex officio* recorder, under date of February 1, 1888.

Also the certificate, without date, that the said act was recorded in the Book of Mortgages No. 6 in the parish of St. Bernard on the 27th September, 1870, said certificate being made by J. R. Ducros, clerk and *ex officio* recorder, without date.

And now Mr. J. J. WARREN states that he desire- to be recalled in order to correct his testimony, and he states that Mr. F. B. Fleitas was a member of the firm of Warren & Crawford at the date of the marriage contract.

By Mr. SEMMES:

Q. Have you got the books of the firm of Warren & Crawford?
A. No, sir; I have not.
Q. Where are they?
A. They were lost or sold as waste paper.
Q. In what bank did you keep your account at that time?
A. Well, we had accounts at two or three banks.
Q. From what bank did you get this $20,000?
A. I do not recollect now.
Q. What were the three banks that you kept an account with?
A. Pike's bank, the Citizens' bank, and the Bank of America.
Q. Do you remember whether you drew a check for $20,000 on any one bank to get the money?
A. Yes, sir; I think—I do not know what bank I draw the check on.
Q. Was it one check for $20,000?
A. Yes, sir.
Q. And you do not remember upon what bank you drew it?
A. No, sir.
Q. Did you never know what became of the money afterwards?
A. No, sir.
Q. Was it not put back into the firm?
A. No, sir; it never was.

MARY CORINNE WARREN FLEITAS, recalled, deposes and says:

By Mr. ROUSE:

Q. Please examine this photograph, taken from the records of the parish of St. Bernard, about your marriage contract with
325 your husband. Look particularly at the inscription upon the margin, first at the one made March 18th, 1874, and state

whether you gave any directions to make such an inscription or authority to the sheriff to order such an incription and erasure and when you first heard of it.

A. No, sir; I never did. I do not know what this is. I do not know anything about it.

Q. When did you first hear of the cancellation of your mortgage resulting from your marriage contract with your husband, made by Philip Toca on the 18th March, 1874?

A. I really do not recollect.

Q. Since this suit was brought or a short time before?

A. Yes, sir.

Q. Look at the erasure signed Philip Toca, recorder, upon the margin of this photographic copy of the record, saying, "Erased, annulled, and cancelled by virtue of a judgment rendered by the U. S. court, Judge E. C. Billings presiding, signed April 25th, 1877; Philip Toca, recorder. Do you know anything about that?

A. No, sir; I do not know anything about it.

Q. Did you ever authorize any such erasure?

A. No, sir.

Q. Did you know of it at the time?

A. No, sir.

NEW ORLEANS, THURSDAY, *April 4th*, 1889.

Mrs. MARY CORINNE WARREN, Wife, etc.,
vs.
WILLIAM F. MELLEN *et al.* } No. 11702.

326 Examination resumed on behalf of the complainant this day.

Present: Rouse & Grant & J. R. Beckwith, Esqrs., for the complainant; Thomas J. Semmes, Esqr., for the defendant.

Mr. Rouse, solicitor for the complainant, offers in evidence the certificate of Edward R. Hunt, clerk of the United States circuit court for the eastern district of Louisiana, showing a search of the record for the judgment referred to in the certificate of Philip Toca, recorder, upon the margin of the record of the marriage contract between F. B. Fleitas and Mary Corinne Warren and the result of such search, marked Complainant No. 6.

Also the affidavit of A. J. Padron, showing the publication of the judgment in the case of Mrs. Mary Corinne Warren, wife of F. B. Fleitas, *versus* F. B. Fleitas, her husband, September 10, 1887, by the 24th judicial district court in and for the parish of St. Bernard, La., marked "Complainant No. 7," the defendants admitting that the publication was made as set forth in the affidavit.

Also the record of the proceedings in the case of Gilbert M. Richardson *vs.* F. B. Fleitas, No. 11722 of the circuit court of the United States for the eastern district of Louisiana, as contained in the printed transcript of said record in the case of Francois B. Fleitas, appellant, *vs.* Gilbert M. Richardson, defendant, No. 1454 of the docket of the Supreme Court of the United States, October term, 1888, including the matter contained in the said printed

transcript, excepting the evidence taken before the master with reference to the amount of the bond required in that case for
327 appeal, marked "Complainant No. 8."

Mr. Semmes, solicitor for the defendant, objects to the above as evidence, it being immaterial to this case.

Also the sheriff's deed conveying the Corinne and Myrtle Grove plantations to Mrs. F. B. Fleitas November 19th, 1887, together with the certificate thereon showing its record in the parish of St. Bernard, in the Book of Conveyance No. 17, and in the Sheriff's Book No. 2, on the 23rd of November, 1887, marked "Complainant No. 9."

Also the notarial act passed before Ducatel, notary public, on the 28th June, 1871, whereby F. B. Fleitas granted a mortgage upon the Corinne plantation in favor of Mrs. Barthelemy Fleitas, his mother, to be produced and marked "Complainant No. 10."

I, Henry Langford, notary public, acting as examiner by consent of the parties to this suit, an order of court having been first obtained to that effect, to take the depositions of witnesses on behalf of the complainant, do hereby certify that on the days named in the foregoing depositions hereto annexed I was attended at the law office of Rouse & Grant, Esqrs., 3½ Carondelet street, in the city of New Orleans, by the counsel and the witnesses aforesaid; that the said witnesses were duly sworn and examined and their depositions were reduced to writing by me, the signatures of the witnesses to the said depositions being waived.

[L. S.] (Signed) HENRY LANGFORD,
Notary Public, Examiner.

328 *Petition of F. B. Fleitas to be Declared a Bankrupt, No.* 1533, *in U. S. District Court for the District of La.*

Petition by debtor.

To the honorable judge of the district court of the United States for the district of Louisiana:

The petition of Francis B. Fleitas, of the — of —, in the parish of St. Bernard and State of Louisiana and district aforesaid, respectfully represent that he has resided for 12 months next immediately preceding the filing of this petition in the parish of St. Bernard, State of Louisiana, within said judicial district; that he owes debts exceeding the amount of three hundred dollars and is unable to pay all of the same in full; that he is willing to surrender all his estate and effects for the benefit of his creditors and desires to obtain the benefit of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

That the schedule hereto annexed, marked A, and verified by your petitioner's oath, contains a full and true statement of all his debts and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereto annexed, marked B, and verified by your

petitioner's oath, contains an accurate inventory of all his estate, both real and personal, assignable under the provisions of
329 said act.

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said act, and that he may be decreed to have a certificate of discharge from all his debts provable under the same—that is, said Schedules "A" and "B" are correct and true to the best of petitioner's knowledge and belief, but owing to the fact that petitioner has lost or mislaid certain of his books, accounts, and memoranda he does not know that said schedules are absolutely correct and full in every particular, but they are so far as petitioner knows and believes, and should any errors be shown or discovered petitioner will immediately correct the same.

Oath to the Foregoing Petition.

UNITED STATES OF AMERICA, *District of Louisiana*, } ss:

I, Francis B. Fleitas, the petitioning debtor mentioned and described in the foregoing petition, do hereby make a solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief; and I do further make oath that I am a citizen of the United States of America, and that I will bear true faith and allegiance to the same.

(Signed) F. B. FLEITAS, *Petitioner.*

Subscribed and sworn to before me this 26th day of April, A. D. 1876.

(Signed) J. WARD GURLEY, JR., *Register.*

330 No. 1533.

U. S. District Court.

In the Matter of F. B. FLEITAS.

SCHEDULE A.

Filed April 26, '76, at 2 p. m.

J. A. CHARBONNET,
D'y Clerk.

Statement of all Creditors who are to be Paid in Full or to Whom Priority is Secured According to the Provisions of the 28th Section of said Act.

Order of payment—preferred claims.	Names of creditors.	Residences and occupations.	Amount.	When and where contracted.	Nature and consideration of the debt, and whether contracted as copartner or joint contractor; and, if so, with whom.
1. Debts due the United States and taxes and assessments under the laws thereof	None	None			None.
2. Debts due to the State of Louisiana and taxes and assessments under the laws of said State	None	None			None.
3. Wages due clerk, servant, etc., to an amount not exceeding $50 for labor performed within six months	None	None			None.
4. Other debts preferred by said act	None	None			None

Oath to Schedule A.

UNITED STATES OF AMERICA, *District Court of Louisiana,* } *ss:*

On this — day of April, A. D. 1876, before me personally came F. B. Fleitas, the person mentioned in and who subscribed to the foregoing petition and schedule marked A respectively, and who, being by me first duly sworn (or affirmed), did declare the said schedule to be a statement of all all his debts, etc., in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the U. S.," approved March 2, 1867, and the amendments thereto.

J. WARD GURLEY, JR., *Register in Bankruptcy.*

To the best of my knowledge & belief, as per statement contained in my petition.
(Signed)

F. B. FLEITAS, *Petitioner.*

Creditors Holding Securities.

N. B.—Particulars of securities held, with dates of same, and when given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the 11th section of the act; whether contracted as copartner *of* joint contractor with any other person; and, if so, with whom.

Reference to ledger or voucher.	Names of creditors.	Residence and description.	Where and when contracted.	Value of securities.	Amount of debts.
	N. O. Mutual Insurance Association.	New Orleans, La.; corporation; holds petitioner's note, due Oct. 15, 1873, for $2,205.10, secured by pledge of 205 shares of the stock of said association of $30.00 each.	N. Orleans	6,150 00	2,205 10
	New Orleans National Banking Association.	New Orleans, La.; corporation; holds petitioner's note, due Dec. 9, 1873, for $4,500.00, secured by pledge of note — J. J. Warren for $4,500.00.	N. Orleans	4,500 00	4,500 00
	E. H. Reynes & Harrison, receivers.	New Orleans; receivers; holds petitioner's note for $3,000.00, secured by pledge of Mrs. B. Fleitas' note for $3,000.00, due July 26, 1873, in suit.	N. Orleans	3,000 00	3,000 00
	John Corkrem & W. F. Halsey, receivers.	New Orleans; receivers; holds petitioner's note, due Dec. 8, 1873, secured by pledge of Mrs. B. F. Fleitas' note for $5,000.00, due Dec. 21, 1871.	N. Orleans	5,000 00	3,042 67

Oath to Schedule A.

UNITED STATES OF AMERICA, }
District Court of Louisiana. }

On this — day of April. A. D. 1876, before me personally came F. B. Fleitas, the person mentioned in and who subscribed to the foregoing petition and schedule, marked A respectively, and who, being by me first duly sworn (or affirmed), did declare the said schedule to be a statement of all his debts, etc., in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and the amendments thereto. (Signed) J. WARD GURLEY, JR., *Register in Bankruptcy.*

To the best of my knowledge and belief, as per statement contained in my petition. (Signed) F. B. FLEITAS, *Petitioner.*

335 (Petition by debtor.) SCHED

Creditors Whose Claims

N. B.—When the name and residence (or either) of any drawer, maker, endorser, the name, residence, and occupation of the last holder known to the petitioner. The stated in the schedule of property; the nature of each debt and a demand, whether cause and consideration of such indebtedness in each case, and the place where such

Reference to ledger or voucher.	Names of creditors.	Residence and occupation.
Open account	Thomas Henley	New Orleans, laborer
"	A. Boucher & Co.	New Orleans, merchants
"	Str. Walloon (owner)	New Orleans
"	W. L. Cushing	New Orleans, merchant
"	Wolf & Marks	New Orleans, merchants
"	Est. J. O. Noyes	New Orleans
"	Bostick & Seymour	New Orleans, merchants
"	Leblanc & Beck	New Orleans, merchants
"	R. Milliken	New Orleans, merchant
"	A. W. Hyatt	New Orleans, merchant
"	Pinney, Shehahn & Russ	New Orleans, merchants
"	Berwin & Johnson	New Orleans, merchants
"	I. Bloom & Co.	New Orleans, merchants
"	A. J. Ward & Co.	New Orleans, merchants
"	Wheelock, Finlay & Co.	New Orleans, druggists
"	Roos & Co.	New Orleans, merchants
"	H. Bonnebel	New Orleans, merchant
"	Crescent City Ice Co.	New Orleans, corporation
"	Fred. Kleeves	New Orleans, merchant
"	E. H. Lehmann & Co.	New Orleans, merchants
"	E. F. Virgin	New Orleans, merchant
"	Thompson Bros.	New Orleans, merchants
"	Johnson, Armstrong & Co.	New Orleans, stationers
"	Rice Bros. & Co.	New Orleans, merchants
"	Elkin & Co.	New Orleans, merchants
"	John Ward	New Orleans, merchant

Oath to

UNITED STATES OF AMERICA, *District of Louisiana*, } ss:

On this — day of April, A. D. 1876, before me personally came F. B. Fleitas. the marked A respectively, and, who being by me first duly sworn (or affirmed), did de act of Congress entitled "An act to establish a uniform system of bankruptcy thereto.

(Signed)

To the best of my knowledge and belief, as per statement made in my petition.

ULE A. 336

are Unsecured.

or holder of any bill or note, etc., etc., are unknown the fact must be stated, and also debt due to each creditor must be stated in full, and any claims by way of set-off founded on written security, obligation, contract, or otherwise, and also the true indebtedness accrued.

Amount.	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, *ect.*, and whether contracted as copartner or joint contractor or with any other person; and, if so, with whom.
595 35	New Orleans, 1873 & '4	For ditching.
373 06	N. Orleans, 1872	For mdse. bought by petitioner.
339 10	N. Orleans, 1872 & '3	For freight.
336 35	N. Orleans, 1872	For machinery bought.
383 42	N. Orleans, 1873	For merchandise bought.
375 80	N. Orleans, 1871, '2, & '3	For lumber bought.
438 35	N. Orleans, 1873 & '4	For merchandise bought.
300 00	N. Orleans, 1872 & '3	For merchandise bought.
214 49	N. Orleans, 1873 & '4	For advances.
152 00	N. Orleans, 1872 & '4	For stationery bought.
179 60	N. Orleans, 1872	For merchandise bought.
305 93	N. Orleans, 1873 & '4	For merchandise bought.
160 94	N. Orleans, 1874	For merchandise bought in suit.
151 17	N. Orleans, 1873	For machinery bought.
192 42	N. Orleans, 1873 & '4	For drugs bought.
112 00	N. Orleans, 1873 & '4	For merchandise bought.
118 50	N. Orleans, 1872	For merchandise bought.
116 00	N. Orleans, 1873	For ice bought.
102 00	N. Orleans, 1873	For merchandise bought.
96 15	N. Orleans, 1873	For merchandise bought.
80 15	N. Orleans, 1873	For merchandise bought.
70 00	N. Orleans, 1873 & '4	For repairing carriage.
69 55	N. Orleans, 1873	For stationery bought.
68 80	N. Orleans, 1873	For merchandise bought.
60 14	N. Orleans, 1873	For merchandise bought in suit.
75 00	N. Orleans, 1873 & '4	For merchandise bought.

Schedule A.

person mentioned in and who subscribed to the foregoing petition and schedule, clare the said schedule to be a statement of all his debts, etc., in accordance with the throughout the United States," approved March 2, 1867, and the amendments

J. WARD GURLEY, JR.,
Register in Bankruptcy.

F. B. FLEITAS, *Petitioner.*

337 SCHEDULE

Creditors Whose Claims

Reference to ledger or voucher.	Names of creditors.	Residence and occupation.
Open account	Jos. E. Brown	New Orleans, merchant
	Nicholas Theodore	New Orleans, laborer
	Gaines & Relf	New Orleans, merchants
	Phelps, Parke & Co.	New Orleans, merchants
	Maxwell & Leonard	New Orleans, livery stable
	Roberts & Co.	New Orleans, merchants
	J. C. Morris	New Orleans, merchant
	Joseph Schwartz	New Orleans, merchant
	M. Schwartz & Co.	New Orleans, merchants
	J. B. Flotte	New Orleans, merchant
	N. O. Mutual Ins. Association	New Orleans, corporation
	Warren & Atkinson	New Orleans, merchants
	Walter C. Cook	New Orleans, merchant
	Lambon & Noel	New Orleans, merchants
	Stauffer, Macready & Co.	New Orleans, merchants
	L. Hote & Co.	New Orleans, merchants
	C. M. Soria	New Orleans, merchant
	Horter, Peterson & Fenner	New Orleans, merchants
	Charles Nolan	New Orleans, contractor
	John I. Adams & Co.	New Orleans, merchants
	John I. Adams & Co.	New Orleans, merchants
	O. P. Alford	New Orleans, horse trader
	Dr. Joseph Elliott	New Orleans, horse trader
	David McCan	New Orleans, foundry
	Bayly & Pond	New Orleans, merchants

Oath to

UNITED STATES OF AMERICA,
District Court of Louisiana.

On this — day of April, A. D. 1876, before me personally came F. B. Fleitas, the marked A respectively, and, who being by me first duly sworn (or affirmed), did de act of Congress entitled "An act to establish a uniform system of bankruptcy
(Signed)

To the best of my knowledge and belief, as per statement made in my petition.
(Signed)

A—(Continued.) 338

are Unsecured.

Amount.	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as copartner or joint contractor or with any other person; and, if so, with whom.
65 00	N. Orleans, 1873 & '4	For merchandise bought.
60 00	N. Orleans, 1874	For work done.
54 93	N. Orleans, 1873 & '4	For merchandise bought.
45 00	N. Orleans, 1873	For merchandise bought.
46 50	N. Orleans, 1873	For keeping horses.
40 75	N. Orleans, 1873	For merchandise bought.
38 63	N. Orleans, 1873	For merchandise bought.
25 25	N. Orleans, 1873	For merchandise bought.
32 40	N. Orleans, 1873	For merchandise bought.
13 85	N. Orleans, 1873 & '4	For merchandise bought.
1,010 95	N. Orleans, 1871, '2, & '3	For premiums on policies.
13,610 00	N. Orleans, 1873	For merchandise bought.
1,353 65	N. Orleans, 1873 & '4	For merchandise bought.
898 09	N. Orleans, 1873	For lumber bought.
710 55	N. Orleans, 1873 & '4	For merchandise bought.
707 22	N. Orleans, 1873	For lumber bought.
750 00	N. Orleans, 1873 & '4	For merchandise bought.
700 00	N. Orleans, 1873 & '4	For merchandise bought.
800 00	N. Orleans	For ditching. In suit & now on appeal.
977 77	N. Orleans, 1872	For merchandise bought.
1,298 31	N. Orleans, 1872 & '3	For merchandise bought.
1,912 50	N. Orleans	For mules bought. Now in suit in U. S. district court.
2,060 00	N. Orleans, 1872	For mules bought.
1,500 00	N. Orleans, 1873	For repairs to machinery.
2,045 39	N. Orleans	For merchandise bought, upon which judgment has been obtained in parish court, St. Bernard.

Schedule A.

person mentioned in and who subscribed to the foregoing petition and schedule, clare the said schedule to be a statement of all his debts, etc., in accordance with the throughout the United States," approved March 2, 1867, and the amendments thereto.

J. WARD GURLEY, JR.,
Register in Bankruptcy.

F. B. FLEITAS, *Petitioner.*

339 SCHEDULE

Creditors Whose Claims

Reference to ledger or voucher.	Names of creditors.	Residence and occupation.
Judgment	Keep, Hogan & Galway	New Orleans, merchants
Note due Dec. 18, '73	F. Belden	New Orleans, merchant
Judgment	H. Haller	New Orleans, merchant
Note due Ap'l 7, '74	Petalugue & Petit	New Orleans, merchants
Judgment	Lower Coast Packet Co.	New Orleans, corporation
Judgment	W. G. Waller	New Orleans
Open account	N. O. Mutual Ins. Association	New Orleans, corporation
Do.	W. W. King, attorney	New Orleans, attorney
Do.	Warren & Atkinson	New Orleans, merchants
Do.	C. Cavaroc & Son	New Orleans, merchants
Do.	Semmes & Mott	New Orleans, attorneys
Notes	Credit Suisse	Zurich, Switzerland, corporation.
	Julius Aroni, agent	New Orleans
Note due Dec. 29, '73	N. O. Mutual Ins. Association	New Orleans, corporation
Note " do	do.	do. do.
Note " do	do.	do. do.
Note " do	do.	do. do.
Judgment	N.O. Mutual Ins. Association	do. do.
Note due Dec. 26, '73	Credit Mobilier	Paris, France, corporation
	Clark, Bayne & Renshaw, att'ys.	New Orleans, La., att'ys
Note due Dec. 26, '73 Petitioner's	do. do.	do. do.
Note due Dec. 26, '73	Unknown	Unknown
Note " Dec. 26, '73	Unknown	Unknown
Note " Dec. 26, '73	Unknown	Unknown
Note " Dec. 26, '73	Unknown	Unknown
Note " Dec. 26, '73	Unknown	Unknown
Note " Dec. 26, '73	Unknown	Unknown
541 Sundry notes	Unknown	Unknown
Sundry notes	N. O. Mutual Ins. Association	N. O., La., corporation
Acceptance	J. K. Green	Cincinnati, O.
Note	Unknown	Unknown

Oath to

UNITED STATES OF AMERICA,
District Court of Louisiana.

On this — day of April, 1876, before me personally came F. B. Fleitas, the person respectively, and who, being by me first duly sworn (or affirmed), did declare the Congress entitled "An act to establish a uniform system of bankruptcy throughout

(Signed)

To the best of my knowledge and belief, as per statement made in my petition.

A—(Continued.) 340

are Unsecured.

Amount.	When and where contracted.	Nature and consideration of the debt, and whether judgment, bond, bill of exchange, promissory note, etc., and whether contracted as copartner or joint contractor or with any other person; and, if so, with whom.
1,151 91	New Orleans, 187--	For merchandise bought and upon which judgment has been obtained in p'sh court, St. Bernard.
425 00	New Orleans, 1873--	For merchandise bought.
60 90	N. Orleans	For merchandise bought and upon which judgment has been obtained in p'sh court, St. Bernard.
877 61	N. Orleans, 1873	For merchandise bought.
About 172 95	N. Orleans	For freight due and upon which judgment has been obtained in U. S. dist. court.
340 00	N. Orleans	For mdse. bought and upon which judgment has been obtained in parish court, St. Bernard.
4,800 00	N. Orleans	For advances on crop sugar.
1,313 22	N. Orleans	For professional services.
9,915 50	N. Orleans	For advances.
488 40	N. Orleans	For merchandise bought.
About 1,500 00	N. Orleans	For professional services.
About 5,000 00	N. Orleans	For money borrowed.
3,246 67	N. Orleans	The within notes were given for money borrowed.
3,221 33	N. Orleans	
2,668 34	N. Orleans	
2,651 11	N. Orleans	
7,005 10	N. Orleans	For which judgment has been obtained in 2d judicial dist. court, parish St. Bernard.
2,500 00	N. Orleans	For money borrowed by petitioner.
2,500 00	New Orleans	
2,500 00	N. Orleans, 1873	For borrowed money.
2,500 00	N. Orleans, 1873	For borrowed money.
2,500 00	N. Orleans, 1873	For do. do.
2,000 00	N. Orleans, 1873	For do. do.
3,000 00	N. Orleans, 1872	For do. do.
2,500 00	N. Orleans, 1873	For do. do.
25,000 00	N. Orleans	For do. do. 342
11,500 00	N. Orleans	For do. do.
5,000	New Orleans	For petitioner's acceptance of W. Clough's draft on Blymyor, Norton & Co., in suit.
5.000	N. Orleans	For petitioner's note endorsed by J. J. Warren.

Schedule A.

mentioned in and who subscribed to the foregoing petition and schedule, marked A said schedule to be a statement of all his debts, etc., in accordance with the act of the United States," approved March 2, 1867, and the amendments thereto.

J. WARD GURLEY, JR.,
Register in Bankruptcy.

(Signed) F. B. FLEITAS, *Petitioner.*

23—483

343 SCHED

Liabilities on Notes or Bills Discounted which Ought

N. B.—The dates of the notes or bills, and when due, with the names, residences, set forth under the names of the holders. If the names of the holders are not known ness and place of residence. The same particulars as to the notes or bills on which

Reference to ledger or voucher.	Names of holders as far as known.	Place of residence and occupation.
	N. O. S.	

Oath to

UNITED STATES OF AMERICA, }
District Court of Louisiana. }

On this — day of April, A. D. 1876, before me personally came F. B. Fleitas, the marked A respectively, and who, being by me first duly sworn (or affirmed), did act of Congress entitled "An act to establish a uniform system of bankruptcy

(Signed)
(Signed)

345 SCHED

Accom-oda

(N. B.—The dates of the notes or bills, and when due, with the names, residences, set forth under the names of the holders. If the bankrupt be liable as drawer, maker, holders are not known the name of the last holder known to the petitioner should be mercial paper.)

Reference to ledger or voucher.	Names of holders.	Residences of holders and particulars of notes or bills.

Oath to

UNITED STATES OF AMERICA, } *ss:*
District Court of Louisiana, }

On this — day of April, A. D. 1876, before me personally came F. B. Fleitas, the marked A respectively, and who, being by me first duly sworn (or affirmed), did the act of Congress entitled "An act to establish a uniform system of bankruptcy

(Signed)
(Signed)

ULE A. 344

to be Paid by the Drawers, Makers, or Acceptors.

and the business or occupation of the drawers, makers, or acceptors thereof, are to be the name of the last holder known to the petitioner should be stated, and his busi- the petitioner is liable as endorser.

Place where contracted.	Amount.	Nature of liability; whether same was contracted as copartner or joint contractor or with any other person; and, if so, with whom.

Schedule A.

person mentioned in and who subscribed to the foregoing petition and schedule, declare the said schedule to be a statement of all his debts, etc., in accordance with the throughout the United States," approved March 2, 1867, and the amendments thereto.

F. B. FLEITAS, *Petitioner.*
J. WARD GURLEY, JR.,
Register in Bankruptcy.

ULE A. 346

tion Paper.

and the business or occupation of the drawers, makers, or acceptors thereof, are to be acceptor, or endorser thereof it is to be stated accordingly. If the names of the stated, with his business and place of residence; same particulars as to other com-

Place where contracted.	Amount.	Whether liability was contracted as copartner or joint contractor or with any other person; and, if so, with whom.

Schedule A.

person mentioned in and who subscribed to the foregoing petition and schedule, declare the said schedule to be a statement of all his debts, etc., in accordance with throughout the United States," approved March 2, 1867, and the amendments thereto.

F. B. FLEITAS, *Petitioner.*
J. WARD GURLEY, JR.,
Register in Bankruptcy.

347 No. 1533.

U. S. District Court.

In the matter of creditors who have proved their debts at first meeting.

Filed Ap'l 17, '77. K. LOEW, *D'y Cl'k.*

348 & 349 Form 13.

List of Creditors Who Have Proved Their Debts at First Meeting.

In the District Court of the United States for the District of Louisiana.

In the Matter of FRANCIS B. FLEITAS, Bankrupt. In Bankruptcy. No. —.

At New Orleans, in said district, on various dates, A. D. 18-7, before J. Ward Gurley, Jr., one of the registers of said court in bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

The following is a list of the creditors who have this day proved their debts:

	Names.	Residence.	Choice.	Doll's.	Cts.
1.	Wolf & Marks	New Orleans		383	42
2.	Johnson & Berwin	"		301	75
3.	J. J. Warren	"		13,610	00
4.	Warren & Atkinson	"		9,915	50
5.	Keep, Hogan & Galloway	"		1,151	91
6.	Johnson & Armstrong	"		69	55
7.	H. N. Soria	"		879	50
8.	A. Boucher & Co.	"		373	06
9.	J. A. Ruiz	"		359	10
10.	A. W. Hyatt	"		152	00
11.	N. O. Ins. Ass'n	"		19,397	13
12.	Fred. Kells	"		102	00
13.	G. R. Finley & Co.	"		257	50
14.	W. C. Cook & Co.	"		1,353	65
15.	Rice, Born & Co.	"		68	80
	E. H. Reynes, Harrison, } receivers	"		4,963	70
	18. Jos. Schwartz	"		25	25
350 & 351	19. E. F. Virgin	New Orleans		80	15
	20. W. W. King	"		1,313	22
21.	Gains & Relf	"		54	93
22.	Semmes & Mott	"		1,500	00
23.	Lamban & Noel	"		898	09
24.	Mrs. D. B. Fleitas	"		8,000	00
25.	Elkin & Co.	"		60	14
26.	T. A. Beck	"		302	90
				$65,573	25

April 17th, '77.
Attest: J. WARD GURLEY, JR., *Register.*

27. Societé de Credit Livissè, Jules Aroni, agent, proved Ap'l 19th 4,098 00
28. Assignee's estate Chas. Cavaroc & Son, proved April 21 ..... 7,860 66

April 21st, '77.
Attest: J. WARD GURLEY, JR., *Register.*

Exhibits annexed to answers of defendants, copied at pages 78, 79, 81, 92, 165, 168, 171, 176.

Deed of sheriff conveying Corinne plantation to Mrs. B. Fleitas, copied at page 231 of this transcript.

Act of Mrs. B. Fleitas conveying Corinne plantation to her son, F. B. Fleitas, copied at page 240 of this transcript.

Certificate of Discharge in Bankruptcy, Marked Exhibit M.

United States District Court, Eastern District of Louisiana.

No. 1533. In Bankruptcy.

Present: The Honorable Edward C. Billings.

353 Whereas Francis B. Fleitas has been adjudged bankrupt under the act of Congress establishing a uniform system of bankruptcy throughout the United States approved March 2, 1867; and whereas it appears that the said petitioner has conformed to all the requirements of law in that behalf:

It is therefore ordered and decreed by the court that said Francis B. Fleitas be, and is hereby, forever discharged from all debts and claims which by said act are made provable against his estate and which existed on the 26th day of April, 1876, on which day the petition for adjudication was filed, excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy.

Given under my hand and seal of our court, at New Orleans, this 25th day of April, 1877.

(Signed) EDWARD C. BILLINGS, *Judge.*

CLERK'S OFFICE, *May 19th*, 1888.

True copy of original.

(Signed) J. DEVONSHIRE, *Clerk.*

The two marginal inscriptions on the marriage contract, marked Exhibit 4, annexed to defendant Richardson's answer, said marginal inscriptions both being made by Philip Toca, recorder of the parish of St. Bernard, etc., copied at page 95 of this transcript.

354 *Decree. Entered and Filed June 12, '89.*

Circuit Court of the United States, Eastern District of Louisiana.

Mrs. MARY CORINNE WARREN FLEITAS
vs.
W. F. MELLEN *et als.*
} No. 11702. In Equity.

This cause came on at this term to be heard on the bill of complaint, the supplemental bill, the answers of the defendants, the replications thereto, and exhibits, evidence, and testimony, and was

argued by the solicitors for the respective parties and submitted. On consideration whereof, for the reasons assigned in the written opinion filed herein, it is now ordered, adjudged, and decreed that the bill and supplemental bill of complaint herein be dismissed at the costs of complainant.

(Signed) EDWARD C. BILLINGS, *Judge.*

New Orleans, June 12, 1889.

Motion and Order for Appeal. Entered and Filed June 14th, 1889.

Circuit Court of the United States, Eastern District of Louisiana.

355 Mrs. MARY CORINNE FLEITAS, Wife of Francis B. Fleitas,
vs.
WILLIAM F. MELLEN, GILBERT M. RICHARDSON, *et al.*
No. 11702. In Equity.

And now comes the said complainant herein, by J. R. Beckwith and Rouse & Grant, her solicitors, and, suggesting to the court that the said complainant herein feels aggrieved by the final decree herein rendered against her herein at the present term of this court, and is advised that there is error in said decree to her prejudice, *and* now move the court, in open court at the same term of court at and during which said final decree was made and entered herein, that the court grant and allow said complainant an appeal from said decree herein to the Supreme Court of the United States, returnable in said Supreme Court on the first day of the next regular term thereof, upon said complainant entering into and filing herein the bond in form as required by — in such cases in the sum of two hundred and fifty dollars, with good and sufficient surety, and conditioned as the law directs.

And the court, considering said motion in open court, grants and allows said appeal in form and with the bond and security as said complainant hath suggested and moved for herein and by this motion.

356 UNITED STATES OF AMERICA:

Know all men by these presents that we, Mrs. Mary Corinne Warren Fleitas, wife of F. B. Fleitas, as principal, and *and* Jackson E. Fleitas, as surety, are held and firmly bound, jointly and severally, unto Gilbert M. Richardson, Albert E. Shattuck, Frank Hoffman, Shattuck & Hoffman, The British and American Mortgage Company, Limited, and William B. Shattuck and George Moorman in the sum of two hundred and fifty dollars, lawful money of the United States of America, to be paid to the said Gilbert M. Richardson, Albert E. Shattuck, Frank Hoffman, Shattuck & Hoffman, The British and American Mortgage Company, Limited, William B. Shattuck, and George Moorman, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves

and each of us by himself and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated the 15th day of June, in the year of our Lord eighteen hundred and eighty-nine.

Whereas the said Mrs. Mary Corinne Warren Fleitas having heretofore, to wit, on the 14th day of June, 1889, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the twelfth day of June, 1889, by the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of Mrs. Mary Corinne Warren Fleitas against William F. Mellen and others, No. 11702 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden Mrs. Mary Corinne Warren Fleitas shall prosecute her said appeal to effect and shall answer all costs if she shall fail to make good her plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(S'g'd) MRS. MARY CORINNE WARREN FLEITAS, [L. S.]
By J. D. ROUSE, *Att'y.* [L. S.]
J. E. FLEITAS. [L. S.]

Signed, sealed, and delivered in the presence of—
(S'g'd) J. D. ROUSE.
H. J. CARTER.

Bond approved June 15, 1889.
(Signed) EDWARD C. BILLINGS, *Judge.*

357 [Endorsed:] No. 11702. United States circuit court, district of Louisiana. Mrs. M. C. W. Fleitas *vs.* W. F. Mellen *et al.* Bond for appeal. Filed June 15, 1889. —— ——, clerk.

I authorize my wife to sign the within bond and prosecute the appeal in said suit.
(S'g'd) F. B. FLEITAS.

N. O., June 15, '89.

UNITED STATES OF AMERICA, *District of Louisiana,* } *ss:*

Personally appeared Jackson E. Fleitas, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the parish of St. Bernard, and is worth the full sum of two hundred and fifty dollars over and above all of his debts and liabilities and property exempt from execution.
(Signed) J. E. FLEITAS.

Subscribed and sworn before me this 15 day of June, 1889.
(Signed) H. J. CARTER,
Deputy Clerk U. S. Circuit Court, District of Louisiana.

358 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 356 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of Mrs. Mary Corinne Warren Fleitas *vs.* W. F. Mellen *et als.*, No. 11702 of the docket of the said court.

Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

Witness my hand and the seal of said court, at the city of New Orleans, this 11 day of July, A. D. 1889.

E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 11 day of July, A. D. 1889.

EDWARD C. BILLINGS, *Judge.*

359 *Copy of Opinion. Filed June 12th*, 1889.

EDWARD C. BILLINGS, *Judge*:

This is a case presenting the question whether a debt which the husband owed to the wife for a portion of her paraphernal estate, received by him at the time of marriage, was, so far as relates to a lien upon his after-acquired real estate, acquitted by a discharge in bankruptcy.

On the 6th day of February, 1868, the complainant, then Mary Corinne Warren, was married to Francis B. Fleitas. The marriage and residence of the parties to the marriage were within this State. There was a marriage contract, by which, as well as by the law of Louisiana, the wife had a mortgage for the sum of $20,000 of her money received by him at the time of the marriage. Subsequently, Sept. 20, 1870, when the constitution of the State abolished tacit mortgages, this mortgage was duly recorded in the parish where the property in dispute in this case is situated.

Some time in the year 1877 the husband, Francis B. Fleitas, was discharged as a bankrupt. It does not appear that the complainant, by any act of hers, connected herself with the proceedings in the bankruptcy of her husband.

Subsequently to the discharge, the husband, Fleitas, acquired the two plantations which are the subject-matter of this suit. In

1884 he executed a mortgage upon them, known as the Richardson mortgage, to which the complainant is not a party.

In 1887, Sept. 10, the complainant obtained a judgment of separation of property against her husband, Francis B. Fleitas, and for this amount $20,000 of the wife's paraphernal property, with a declared privilege, and seized and sold the property, the two plantations in dispute, — purchased them herself at the sheriff's sale; and now files this her bill to prevent the defendants from enforcing the Richardson mortgage against the property so purchased by her.

Thus is the question presented, whether the husband's discharge in bankruptcy included and operated upon the wife's debt so far as relates to any lien upon after-acquired land.

An attempt was made on the part of the respondents to show that there had been an erasure of the wife's mortgage; but no authority was shown for the erasure from any court of competent jurisdiction nor was there any proof that the complainant had been a party to any such proceeding, and therefore the sole question is as to the effect of the discharge.

It is urged by the complainant that it is not competent for any one save the bankrupt to plead his discharge. The right to plead the discharge, so far as relates to a mere judgment establishing indebtedness, is undoubtedly in the bankrupt alone. As is urged in the brief filed by the complainant's solicitors, this plea is, in this respect, like that of infancy and the statute of frauds. The reason is that, though the discharge of a debtor extinguishes the legal obligation for payment, the moral obligation to pay still rests upon the debtor, and no one can elect for him to disregard that obligation. This has relation solely to the right of a creditor to recover a personal judgment for a debt against a discharged bankrupt. But the claim of the complainant, when viewed as based solely upon a personal judgment between the complainant and her husband, is altogether ineffectual against the Richardson mortgage, for the judgment was rendered Sept. 10, 1887, and the Richardson mortgage was recorded Jan. 28, 1884. To enable the complainant to recover against those who assert the Richardson mortgage she must maintain and establish that her lien springing out of her mortgage was unaffected by the discharge in bankruptcy of the husband, survived it, and settled down upon the property in dispute as soon as it was acquired by him and before the execution of the Richardson mortgage.

The question, then, here presented by the defendant's pleadings is not whether he can urge the discharge so far as relates to the personal judgment, but so far as it relates to property upon which the debt, if discharged, could thereafter impress no privilege.

The plea presents the discharge only as affecting the lien. This plea can be urged by any one claiming an interest in the thing adverse to the asserted lien, and is properly presented by the respondents.

The question, then, is, At the time when Richardson took and recorded the special mortgage upon the two plantations were they

subject to the lien of the wife for her paraphernal estate springing out of the $20,000 advanced under the marriage contract?

It is urged that this debt and the individual lien were extinguished by the discharge in bankruptcy of the husband.

The argument has been urged with great force, both orally and by brief, that the establishment of the lien of the wife growing out the marriage contract and under the laws which regulate the rights of the spouses *inter sese* is in the nature of a provisions of the law for the support and maintenance of a married woman, and is to be viewed, as is her right to dower in the common-law States, as incapable to be affected by the bankrupt law; but if the law of Louisiana left the wife, upon the delivery of her marriage portion to her husband, with a debt which, through existing from husband to wife, was in its nature a debt enforceable as and recognized as having the qualities of an ordinary debt, then the debt could be extinguished by the husband's discharge in bankruptcy, and with the debt would fall the lien upon the husband's property, which could not be continued or revived by any judgment between husband and wife to the displacement of the rights of a mortgagee under a mortgage already existing.

It is not an easy question to solve; but I think the decisions of our supreme court have gone far toward settling it adversely to the claims of the wife in this case.

In Alling *vs.* Egan, 11 Rob., 244, a wife had a separation of property, a judgment, and execution against her husband partly satisfied when the husband was discharged in bankruptcy. It was held that the balance of the debt due by the husband to his wife was extinguished by his discharge; that any property acquired by the husband afterward was free from any claim on her part. It is urged in this case that there had been no separation of property, and that the wife was not capacitated to consent to the discharge of the husband. But the wife may resume at any time the administration of her paraphernal property. C. C., 2387 (old article 2364) and 2391 (old article 2368).

Nor is the authorization of the husband necessary in the administration of her paraphernal property. Dickerman *vs.* Reagan, 2 Ann., 240. In case of insolvency she can at will recover judgment against her husband and enforce payment of any debt of the nature of the debt involved in this suit. She is under our law fully capacitated to administer her paraphernal estate and is qualified to do all that is necessary for that purpose. Hence she might have proved her debt.

In Hawes *vs.* Bryan, 10 La., 136, there was a debt due a wife from her husband arising from the receipt by him of money belonging to her paraphernal estate; this debt had been seized and sold under an execution upon a judgment against her. There had been no separation of property. The court held that the debt was subject to seizure, and that the creditor, who had bought it at sheriff's sale, obtained a valid title to it. This case seems to dispose of the argument that there is any quality impressed upon such a debt by reason of its existing in favor of a wife against a husband which

would prevent its extinguishment by any cause which would extinguish any other debt, for if it is so independent of the marital relations that it may be made to pass from her and be acquired by her creditors by suit and seizure it is difficult to see why it is not for the same reason capable of being destroyed by the discharge.

This decision would seem to so characterize the rights of the wife in such a debt that to hold that it was extinguished by the discharge of the husband would neither give nor take away any quality, but would simply classify it among the provable debts according to the qualities which our jurisprudence has declared it possesses; and, like the case of Porter *vs.* Lazero, cited from the 109 U. S. Reports, p. 84, would neither annul nor destroy nor impair any rights of married women which are vested by the laws of the repective States.

Great force is added to this view from the fact that unless it should be held that a wife's debt of such a character as is the one here submitted to the court was provable against her husband in bankruptcy an estate ample to pay her and without any outranking privilege and against a husband who might thereafter acquire nothing might be administered in bankruptcy and distributed to her exclusion. It would seem that the Congress must have intended such a debt should be provable. If the debt is provable it is extinguished by the discharge. U. S. Statutes, vol. 14, pp. 525, 533, sections 19 and 34.

My conclusion is that a decree must be entered that the bill be dismissed at the complainant's cost.

360 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Gilbert M. Richardson, Albert E. Shattuck, Frank Hoffman, Shattuck & Hoffman, The British and American Mortgage Company, Limited, and William B. Shattuck, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a motion for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in the suit wherein Mrs. Mary Corinne Warren Fleitas, wife of F. B. Fleitas, is complainant and appellant and Gilbert M. Richardson, Albert E. Shattuck, Frank Hoffman, Shattuck & Hoffman, The British and American Mortgage Company, Limited, and William B. Shattuck and George Moorman are defendants and appellees, to show cause, if any there be, why the decree rendered against the said Mrs. Mary Corinne Warren Fleitas, wife of F. B. Fleitas, as in said motion for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 22 day of June, in the year of our Lord one thousand eight hundred and eighty-nine.

EDWARD C. BILLINGS, *Judge.*

361 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 11702. Mrs. Mary Corinne Warren Fleitas, wife of F. B. Fleitas, *vs.* W. F. Mellen *et als.* Citation of appeal. No. —. U. S. circuit court, eastern district of Louisiana. Filed June 25, 1889. E. R. Hunt, clerk.

Marshal's Return.

Received Jun- 22, 1889, by the U. S. marshal, and on the same day I served a true duplicate of the within citation of appeal on Gilbert M. Richardson, Albert E. Shattuck, Frank Hoffman, Shattuck & Hoffman, The British and American Mortgage Company, Limited, and William B. Shattuck, defendent- and appellee-, through their att'y of record, Thomas J. Semmes, by handing the said duplicate to him, the said att'y, in person, in the city of New Orleans, and leaving the same in his hands.

J. B. DONNALLY,
U. S. Marshal,
By J. B. DONNALLY, Jr.,
D'y U. S. Marshal.

Returned June 24, 1889.

I, J. B. Donnally, Jr., being duly sworn, do depose & say I am a lawful dep'ty United States marshal for the eastern district of La., and that the foregoing service was made by me in the manner set forth in the above return.

J. B. DONNALLY, Jr.

Sworn and subscribed to before me this 25 day of June, 1889.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

E. R. HUNT, *Clerk.*

362 The United States of America:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to George Moorman, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a motion for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in the suit wherein Mrs. Mary Corinne Warren Fleitas, wife of F. B. Fleitas, is complainant and appellant and Gilbert M. Richardson, Albert E. Shattuck, Frank Hoffman, Shattuck & Hoffman, The British and American Mortgage Company, Limited, and William B. Shattuck and George Moorman are defendants and appellees, to show cause, if any there be, why the decree rendered against the said Mrs. Mary Corinne Warren Fleitas, wife of F. B. Fleitas, as in said motion for appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable —— ——, Chief Justice of the Supreme Court of the United States, this 22 day of June, in the year of our Lord one thousand eight hundred and eighty-nine.

EDWARD C. BILLINGS, *Judge.*

363 [Endorsed:] United States circuit court, eastern district of Louisiana. No. 11702. Mrs. Mary Corinne Warren Fleitas, wife of F. B. Fleitas, *vs.* W. F. Mellen & *als.* Citation of appeal. No. —. U. S. circuit court, eastern district of Louisiana. Filed June 29, 1889. H. J. Carter, d'y clerk.

Marshal's Return.

Received Jun- 22, 1889, by the U. S. marshal, and on the same day & date I served a true duplicate of the within citation of appeal on Geo. Moorman, defendant and appellee, through his attorney of record, Walter D. Denegre, Esq., by handing the said duplicate to said attorney in person, in the city of New Orleans, and leaving the same in his hands.

J. B. DONNALLY,
U. S. Marshal,
Per T. M. MOORMAN,
D'y U. S. Marshal.

Ret'd June 27, '89.

I, T. M. Moorman, being duly sworn, do depose & say that I am a lawful deputy United States marshal for the eastern district of Louisiana, and the service as set forth in above return was made by me, as is correctly stated in said return in accordance with the facts of said service.

T. M. MOORMAN.

Sworn & subscribed before me this 27 day of June, 1889.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.

E. R. HUNT, *Clerk.*

Endorsed on cover: Case No. 13,729. E. Louisiana C. C. U. S. Term No., 483. Mrs. Mary Corinne Warren Fleitas, appellant, *vs.* Gilbert M. Richardson, Albert E. Shattuck, Frank Hoffman, *et al.* Filed October 11, 1889.

SUPREME COURT OF THE UNITED STATES.

F. B. FLEITAS
vs.
GILBERT M. RICHARDSON. } No. 299. October Term.

Appeal from the circuit court for the eastern district of Louisiana.

It is stipulated and agreed by and between counsel for appellant and appellee that the attested copy of the writ of seizure and sale, omitted from the original transcript in this cause as taken up by the appellee, but filed by the appellant in this cause on the 21st of January, 1889, be taken as part of the record herein without resorting to certiorari, and that the same be printed as a part of the record herein.

March 17, 1892.

J. R. BECKWITH,
Counsel for Appellant.
THOS. J. SEMMES,
For Appellee.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern District of Louisiana.

GILBERT M. RICHARDSON
vs.
F. B. FLEITAS. } No. 11722.

The President of the United States to the marshal of the United States for the eastern district of Louisiana, Greeting:

You are hereby commanded to seize and take into your possession, according to law, the property described in the petition herein, as follows, including the buildings, fixtures, and all improvements and appurtenances situated thereon, to wit:

First. A certain tract of land or plantation known as the "Myrtle grove," situated in the parish of St. Bernard, in the State of Louisiana, on the left bank of the River Mississippi at about two and one-half leagues below the city of New Orleans, measuring about twenty arpents, more or less, front on said river, but on a line measuring at right angles from the intersection of the levee with the lower side, measuring nineteen arpents and twelve toises in width, and having on the lower side line, which separates it from the lands of Ducros, a depth of two hundred and thirty-one and one-half arpents

and on the upper side line, which separates it from the property of Gabriel Villeré, a depth of one hundred and ninety-seven and one-third arpents, both rear lines diverging four degrees fifty-four minutes and thirty seconds, and running to the property of Antoine Michand, which bounds said plantation in the rear, being the property which said F. B. Fleitas acquired from L. E. Lemarie by act passed January 7th, 1882, recorded in Book No. 15, fol. 121–123, of the records of conveyances of St. Bernard parish, La.

Second. A sugar plantation situated in St. Bernard parish, at about seven miles below the city of New Orleans, on the left bank of the river Mississippi, measuring about nineteen arpents front on said river by a depth extending up to Lake Borgne, bounded on the upper line by property belonging to Messrs. Erreville F. Villeré and Denis Villere and on the lower line by the plantation of A. W. Walker, being the property which the said F. B. Fleitas acquired from Mrs. B. Fleitas by act of sale dated Ap'l 28, 1877, and registered in Book of Conveyances No. 13, p. 194, of the records of St. Bernard parish, La., and known as the "Corinne" plantation, and also all the engines, boilers, kettles, and other machinery and all other property of whatsoever name or description, immovable by destination, then on or that might be thereafter placed on or attached to said plantations or either of them—

To satisfy the amount of complainant's demands as set forth in the bill and petition herein, to wit, twenty-seven thousand two hundred and sixteen dollars, with interest on twenty-five thousand and two hundred dollars thereof, at eight per cent. per annum, from January 1st, 1888, and on two thousand and sixteen dollars thereof, at five per cent., from January 1st, 1888, and five per cent. attorney's fees on said amount so in suit, and all costs.

Said sale to be for cash, without appraisement, and said sale to be stayed until the further orders of the court, under its order dated June 29th, 1888, on the bill herein; and what you do in the premises you make due return thereof, together with this writ, to our said court, according to law.

[SEAL.] Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 22nd day of November, A. D. 1888.

(Signed) E. R. HUNT, *Clerk.*

CLERK'S OFFICE.

I certify that the foregoing is a true copy of the original writ of seizure and sale issued in the case of Gilbert M. Richardson *versus* F. B. Fleitas and placed in the hands of the U. S. marshal for the eastern district of Louisiana, and is not included in the transcript of record as made for the U. S. Supreme Court.

Witness my hand and seal of said court, at the city of New Orleans, this 11th day of January, 1889.

{Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.}

E. R. HUNT, *Clerk.*

[Endorsed:] Sup. Court U. S. 1888, Oct'r term. No. 299. Gilbert M. Richardson *vs.* F. B. Fleitas. Copy of writ of seizure and sale.

[Stamped:] Office Supreme Court U. S. Filed Jan. 21, 1889. James H. McKenney, clerk.

[Endorsed:] Case No. 13,444. Supreme Court U. S., October term, 1891. Term No., 299. Francis B. Fleitas, app't, *vs.* G. M. Richardson. Stipulation & addition to record. Filed Mar. 21, 1892.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1888.

No. 1451.

FRANCIS B. FLEITAS

versus

GILBERT M. RICHARDSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

Brief of Appellant on Appellee's Motion to dismiss or Affirm.

The motion of appellee, as served, asks the court to dismiss the appeal *and* affirm the decree of the Circuit Court. We presume the motion is intended as a resort to the practice indicated by the fourth and fifth paragraphs of Rule six, of the Rules of this court, although nothing in the motion indicates any reasonable observance of the requirements of that rule. The rule in paragraph four, prescribes the practice in motions to dismiss writs of error and appeal, when the motion is single in purpose; paragraph five, gives the

party moving, authority to add or join with his motion to dismiss, another motion, that, in event the motion to dismiss, for want of jurisdiction, does not prevail, the court affirm the decree, because

"*It is manifest the writ of error or appeal was taken for delay only, or that the question on which the jurisdiction depends is so frivolous as not to need further argument.*

The motion assigns, as ground for dismissal, that the decree appealed from is not a *final decree.*

The ground assigned for affirmance is: "That the evidence on which the order for executory process is based, justified the decree, and that the contention that the evidence is not authentic, has no foundation."

Rule six makes no provision for affirmance on the grounds stated. It is not alleged that the "appeal was taken for delay only," nor "*that question on which the jurisdiction depends is so frivolous as not to need further argument.*"

The question on which jurisdiction depends, is, whether the Circuit Court, from which the appeal comes, has rendered a decree exceeding in an amount or effect, upon the parties, involving five thousand dollars, exclusive of interest and costs. If the record shows such a decree capable of execution by the sale of property not belonging to the appellee, the appellant, is damaged by the decree, in a sum exceeding five thousand dollars, exclusive of interest and costs, has a right to appeal, confirmed by express law. That such

a decree, in form, is shown by the record, is not disputed as a question of jurisdiction. The only question made is as to the character of the decree in respect of its finality. The last clause of paragraph five, Rule six, manifestly relates exclusively to writs of error to state courts, where "the question on which the jurisdiction depends" is whether any federal right has been set up and determined against.

If the motion is to be considered and treated as a motion to dismiss the appeal, with an alternative motion to affirm, in the event it is found that jurisdiction has attached, the motion, in the form in which it is submitted, is a practice that ought not to be encouraged.

We shall deal with the motion in the form in which it has been noticed and served, suggesting a manifest diminution of the record as filed by the appellee, in the fact that it does not pretend to contain any copy of the actual writ of seizure and sale issued out of the court under the *ex parte* decree for process endorsed on the bill. Record, p. 4.

CONCERNING THE ONLY GROUND ASSIGNED FOR DISMISSAL OF THE APPEAL, TO-WIT: THAT THE DECREE APPEALED FROM IS NOT FINAL.

This alleged ground is not true, either in fact or law, nor has the matter been fairly dealt with in the brief filed or served with the motion.

The very first sentence in the brief is, "Appellee filed a *bill in equity*, praying for an order of seizure and sale of certain lands in the parish of St. Bernard." The counsel, therefore, stands committed to the fact that the proceeding is in equity, in a court that can only exercise equity jurisdiction or grant equitable relief within prescribed limits and by a prescribed and rigid form of procedure.

The question whether the decree appealed from is final is therefore not what the state courts, in a state having no equity courts, have determined the decree to be, but what is the character and effect of the decree in equity procedure as administered by the courts of the United States. While certain practice procedure in in the state courts in relation to *suits at law* has been adopted by Congress as procedure in like causes *at law* in the federal court Congress has never authorized the adoption of state procedure in equity causes, even in states where distinction between law and equity jurisdiction and procedure is maintained, and procedure in equity prescribed by state statutes. Congress has also adopted certain final and *mesne* process prevailing in state courts, in civil causes *at law*, but has never adopted or allowed the use of any state process in causes in equity, except in case of an excess due in regular foreclosure by bill, where, on sale, the proceeds of sale of mortgaged property are insufficient to pay the total debt secured, and there has been a decree *in personam* for the balance of the debt.

Reserving for consideration hereafter the question whether the Circuit Court ever had jurisdiction *in equity* of a proceeding *in rem*, of the character disclosed in record, we will deal with the question whether the decree appealed from is final.

The decree, in legal effect, is that the property described in the alleged bill of complaint, shall be sold and the proceeds applied to pay two several promissory notes, shown to the judge at the time of making the decree, whether the notes are due or not, (in fact one of the notes did not fall due by its terms until after the appeal was taken), and five per cent, on the amount of the notes as attorney's fees, for procuring the decree, and that process issue to the executive officer of the court to enforce the decree, as rendered, by sale of the property described.

If counsel had not admitted that this proceeding is in equity, this court has settled the question in Marin vs Lally, 17 Wall. 14.

A decree in equity is final when it finally decides and disposes of the whole merits of the cause and reserves *no further questions or directions for the future judgment of the court*, so that it will not be necessary to bring the cause before the court for its final decision.

Bebee vs. Russell, 19 How. 283, affirmed in *Farrely vs. Woodfolk, 19 How. 288. Thompson vs. Dean, 7 Wall. 342. Railroad Company vs. Bradley, 7 Wall. 575.*

The order of seizure and sale, called "executory pro-

cess," under the law in Louisiana, is a decree in equity final and appealable. *Marin vs. Lally, 17 Wall. 14.*

The decree appealed from, both in form and in effect (if it has any effect), is a final decree, that the property described in the bill, and effected by the decree, be seized and sold by the marshal, and the proceeds handed over to Richardson, without any further action or decision by the Court. The notice issued by the clerk (Rec. 12), is not a notice, even to come in and hear decree, but a demand on Fleitas to comply with the demand of final decree and process issued to enforce that decree. It is, none the less, final decree, in form and effect, because as stated in the mover's brief, it was preceded by no citation, nor because the owner of the property decreed against, never was given a day in court.

The decree if not appealed from would have gone on to accomplish the sale of the property seized without any further action of the court.

It is absurd to say that it was not final of itself, because the owner of the property affected might have brought his action against Richardson or the marshal.

The decree had been rendered by the court, and the marshal held the writ by which the decree was to be enforced. The mortgagor of the land was not compelled to sue either the Richardson or the marshal, nor come into court, in any form, unless he elected to do so. Believing the court to have usurped jurisdiction, he re-

fused to come into court. At what point of time would the decree for the sale of the property become final, if it was not final at the moment of its rendition? The pretense that a decree, accompanied with process, that if executed, will sweep away the entire possession and title of the mortgagor in the mortgaged premises by the act of the executive officer of the court, in the ministerial act of levy and sale, without any reference back to the court even for direction, is not final process on a final decree, is too absurd to merit attention. even if it had not been settled in Marin vs. Lally, 17 Wall. 14.

The position of counsel for appellee is: It is true that if not arrested, this decree will effect the sale of the mortgaged premises; it is true that it was not necessary to cite the defendant Fleitas into court, to obtain the decree; it is true that the mortgagor denies the jurisdiction of the court that made the decree, either over the land affected, or over the person of the mortgagor, and has declared that he will not come into court and become a party to the proceeding in the manner suggested to him by counsel for Richardson, yet for all that, there is no final decree in this cause.

We retort by demanding of the counsel, "if this decree is not a final decree under the conditions stated, *when* will it, under a process of self-incubation, become a final decree?" He would probably answer, "it will become final after it has been executed and has deprived you of all title in the mortgaged premises." Of

course he must *change front after the sale*, in order to avoid impeaching the title conveyed by the marshal under his decree.

We respectfully submit that the appealable character of the decree is too well settled in Marin vs. Lally, to be opened on this motion.

If, on the other hand, the question of finality depended solely on the construction given to the statutes of Louisiana, on which the procedure is based by the Supreme Court of the state, the finality of the decree is equally free from doubt.

In *Meaux vs. Pittman, 32 An. 405*, an attempt was made to transfer to the Federal Court a cause where "executory process" had issued *ex parte*, as in this case the plaintiff appealed from the order of removal, and assigned for error that the application came too late, as the order for "executory process" was a final judgment. The court considering this form of procedure, held that the petition came too late, determining that "*there can be no doubt that the decree for the issuance of the executory process was a final judgment, exhausting the power of the court quoad the application and leaving nothing to be decided and no contest or issue between the parties*," citing 2 An. 491; 3 An. 253; 13 An. 256.

Again, in *Ralston vs. British and American Mortgage Company, 37 An. 193*, the same question came before the court in the same form. The court affirmed *Meaux vs. Pittman*, and held the decree for issuance of

"executory process" to be a "final judgment exhausting the powers of the court *quoad* the application."

It is incomprehensible that counsel for the appellee and mover should have cited *Mitchell vs. Logan*, 34 An. 1003 as "the most recent case on the subject," when *Ralston vs. Mortgage Company*, in 37 An., above cited, is three years later. Probably he overlooked the case or had forgotten it.

We will hereafter show that there is no difference in principle in the cases, for the reason that "executory process" is strictly a *proceeding in rem*, the only thing sued is the *res*, the only thing affected is the mortgaged property. The decree as to the *res* is all the court can do in the way of condemnation; that condemnation is final upon the mortgagor as to the liability of the property acted upon, as it is in any other proceeding *in rem*. The decree does not act on the owner, except incidentally through his property. No judicial determination of indebtedness by him to the plaintiff, or any other person, can be made in the action. His *property is in court* for condemnation, he is not there to be condemned by judgment *in personam*. It is a final judgment that *his property* shall be sold to pay his bond, not that *he* shall pay the bond, or a *fi fa* issue in case of default. It is for this reason that in the language of *Mitchell vs. Logan*, 34 Ann. 1003, cited by the mover, is:

"5th. Its inscription in the mortgage office will, therefore, operate no judicial mortgage.

"6th. If the property mortgaged and seized and sold under it does not bring a price sufficent to satisfy the amount of the claim, the creditor cannot issue execution on such balance without first obtaining judgment thereon contradictorily with his debtor."

"7th. It cannot sustain the plea of *res adjudicata* or *lis pendens*."

If the court had said that the proceeding was *in rem* and not *in pesonam* it would have been under no necessity to catalogue the points of difference between the two forms of proceeding. It is denominated a proceeding *in rem* in the statute, and has been so repeatedly declared by the courts, particularly in *Lawrence vs. Succession of Cox, 32 An. 246, 249.*

We respectfully submit that if the decree appealed from has not been determined to be of the class of final decrees from which appeal lies in *Marin vs. Lally*, it is a question that ought to be thoroughly discussed and heard by the court before any conclusion is reached, particularly when the question whether the Circuit Court has jurisdiction of proceedings in the form of "executory process," hangs upon a division of this court in the forclosure against the New Orleans, Opelousas and Great Western Railroad Company. The jurisdiction of the Circuit Court to issue executory process, has always been doubted, and is still doubted by the best lawyers in Louisiana, and should be definitely settled as, while open, it affects title to real estate.

CONCERNING ALTERNATIVE MOTION TO AFFIRM.

The sole ground for affirmance formulated in the motion as served, is stated in the following terms:

"The ground for affirmance is, that the evidence on which the order for executory process is based, justified such order, and the contention that such evidence is not authentic has no foundation."

We have already shown that a motion to affirm on this ground, is not contemplated in Rule six. That the ground stated, if true, does not affect the jurisdiction of this court. If the decree appealed from is appealable in character, the jurisdiction of this court does not depend upon the question whether the court below erred in reaching a final decree. The almost exclusive function of this court, as a court of review, is to adjudge the very question whether the court below committed error, and correct ascertained error if it can, by its own decree, or send the case back to the lower court, where it cannot render the proper decree on the record in its possession.

If *fatal error* in the court below is a condition upon which the jurisdiction of this court depends, it is probable that it is without jurisdiction of one-half of the cases on its docket.

The motion to affirm, in the form made is unfair, because it subjects the appellant to useless expense, compelling him to practically try the cause twice, and

also because it imposes double labor on the court, in dealing with the merits.

In response to this motion, we do not feel required to formally assign all of the errors committed by the Circuit Court, but will state some of the questions that must be determined by this court before intelligent justice can be done between the parties.

The following questions are at least involved, and will be assigned for error on the trial in this court, when the case is reached for trial in due course.

I.

That the Circuit Court was wholly and entirely without jurisdiction to deal with, or grant and allow "executory process," or to make the decree appealed from.

II.

If the court had jurisdiction to issue executory process under any circumstances, the court could not make the decree or issue the process under its equity powers, until it had first obtained jurisdiction *over the person of the mortgagor* and given him his day in court in some form allowed by the rules governing equity procedure in the federal courts.

III.

Can the federal courts, under the judiciary act, ever acquire jurisdiction over mortgaged property *in*

rem until it has acquired jurisdiction *in personam* over the mortgagor or owner of the property to be acted upon or affected by some form of citation.

IV.

Can the Circuit Court lawfully proceed in equity causes in any form of procedure other than that prescribed by the act of Congress and the rules of procedure in equity, made and ordained for the Circuit Courts by the Supreme Court of the United States.

V.

If there was no defect in the jurisdiction of the Circuit Court, or no question of its right to grant "executory process" upon lawful evidence and showing, did the Circuit Court have before it, when it made the decree, such showing and proof as would have warranted the decree under the laws of Louisiana, under which the court claims to have acted in making the decree.

Although there are other errors apparent on the face of the record, not included in the above statement of errors, enough error has been assigned to show that material and substantial issues of law exist, and must be disposed of, if the decree appealed from is sustained.

While the court has always dealt with the question of *its own jurisdiction*, whenever its action has been

invited by motion, we can find no case where the court has disposed of a case on motion to dismiss based on the question whether the court from which the appeal is taken or to which writ of error is directed, had jurisdiction to render the decree questioned.

In *Nelson vs. Leland*, 22 How. 48, there was a motion to dismiss upon the ground of want of jurisdiction In the lower court. Chief Justice Taney, as the organ of the court, held, "that the question of jurisdiction in the lower court was a proper one for appeal to this court, and for argument when the case is regularly reached, and that this court has jurisdiction of such appeal;" and overruled the motion to dismiss.

Since that day, it has been believed that this cour will not summarily dispose of a cause where there is a question of the jurisdiction of the lower court involved.

It is the belief of the best lawyers in Louisiana, that the right of the federal courts to deal with executory process is more than doubtful, and there is a general desire that the question be settled.

This court has never determined the question. A large number of cases involving this question have come up to this court. The last one, we believe, was the case of Sobral vs. Marchand, No. 85 of the docket of the present term. All of these appeals have met the same fate. Rather than meet the question, the appellees have offered such favorable terms of compromise, that the appeals have not been tried.

The case of the New Orleans, Opelousas and Great Western Railroad Company vs. Charles Morgan, came to this court about 1869, on review from decree awarding "executory process." It appears by the record in the Circuit Court, that there was a writ of error returnable to the December term, 1869, and that the mandate came back on June 21st, 1871. It is understood that the error relied on to reverse that case was want of jurisdiction in the Circuit Court to issue the process. This court divided, and in that manner affirmed the decree, leaving the question of jurisdiction of the Circuit Court resting on the frail basis of a divided court: at least, it is so understood by the profession in Louisiana. There is necessarily no report of the case. This court will hardly accept an assignment of error as frivolous upon which the last action of the court was to divide in opinion upon the question involved.

The question of jurisdiction involved is of a most serious character to both the parties and to the federal courts in Louisiana.

Beyond all doubt, the proceeding, is *in rem* with no *in personam* element in the procedure. Can the Circuit Court under any provision in the constitution or of the judiciary act acquire jurisdiction in a proceeding affecting private rights only where there is a person or corporation as plaintiff and a *thing* only as defendant?

Have the federal courts sitting in equity power to deal with specific property or liens on property and

exclude the owner of the property from the court or disregard his existence? If this cannot be done, the court below never acquired a gleam of jurisdiction in this case. Under the act approved March 3, 1887, defining the jurisdiction of the circuit courts where there is no jurisdiction *ratione materia*, and where private rights only are involved, suits must be between "*citizens of different states*," or "*between citizens of a state and foreign states citizens or subjects.*"

"And no civil suit shall be brought before either of said courts against any person by any original process of proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only in the district of the residence of either the plaintiff or the defendant."

To give jurisdiction in any civil suit, there must be *an actual person*, of the requisite description and residence, actually brought into court as defendant and subjected to control by some original process directed to and served on him in the district in which either he or the plaintiff resides.

No jurisdiction in foreign attachment or any other form of proceedings *in rem* is attempted to be given.

On the regular trial of this appeal, it will be insisted that procedure by "executory process" is a proceeding *in rem*, in the most strict sense of the word. This was not only expressly declared in *Lawrence vs.*

Cox, 32 An. 462, but is demonstrated by the text of the code itself.

The Code of Practice, Article 98, defines executory proceedings, as follows:

"They are executory when seizure is obtained against the *property of the debtor without previous citation*, in virtue of an act or title importing confession of judgment, or in other cases prescribed by law."

The statute does not contemplate giving the debtor a day in court. This article is, we believe, correctly printed on pages two and three of the mover's brief, served with his motion, in so far as counsel has seen fit to give the article to the court.

Whether the balance of this section not printed relates to the questions involved in this controversy, is a question of law and construction, particularly when read in connection with the next article (99), which defines a "suit or action."

ART. 99. "In order to constitute a suit or action there must be at least two parties present or duly represented, although one of the two may fail to appear; it is therefore that they are called the principal parties to the suit."

ART. 100. "The plaintiff is he who sues for something which he says is due or belongs to him,

"The defendant is one against whom the suit is brought."

Articles 114 to 123, inclusive, enact concerning those "AGAINST WHOM ACTIONS MAY BE BROUGHT."

Articles 732, 733, 734, 735 and 738, of the Code of

Practice, are, we believe, correctly printed in the mover's brief, and must have been printed to demonstrate "executory process" a proceeding *in rem*.

The last clause in Article 732 can mean nothing else.

"The proceeding by [redacted] seizure (attachment), or *in rem*, resembles, in some sort, the executory process, but should not be confounded with it, as they are subject to different rules."

That is, the practice and procedure is different in the various forms of proceedings *in rem* referred to.

Article 733 defines the character of an instrument upon which the process can issue in the state courts.

"Art. 733. An act is said to import a confession of judgment, *in matters of privilege and mortgage*, when it is passed before a notary public, or other officer fulfilling the same functions, in the presence of two witnesses, and the debtor has *declared or acknowledged* the debt for which he gives the privilege."

The debtor is not called on to confess judgment for the debt, but *to declare and acknowledge the debt*. The imported confession is only "*in matters of privilege and mortgage*." That is, he is held to have confessed judgment that the particular property mortgaged *is mortgaged* to secure the payment of a debt which he simply *acknowledges or declares was due at the time of the execution of the mortgage*. The debt is not pretended to be in judgment. A simple unsecured debt may be acknowledged before a notary and a thousand witnesses, yet no summary process can be resorted to

for the collection of the debt from the general property of the debtor.

It is by reason of this limitation of the alleged confession of judgment to the confession that the lien, privilege or mortgage bears on the property described, that the supreme court of the state, in *Mitchell vs. Logan, 34 An. 1003*, cited on page 5 of the mover's brief, determined that it did not adjudge anything against the owner of the property, but acted on the property only to the extent to which it was confessed liable to pay the debt, and excused citation against the debtor; his property is in court; he is not even invited to be present.

Whether the federal constitution or Congress has conferred jurisdiction on the Circuit Courts to entertain a proceeding where no citizen of the United States or alien subject is summoned into court, is certainly a question that should be seriously and formally tried in this court, and the question relieved from all doubt in the future, if possible.

IT IS NOT WITHIN THE POWER OF FEDERAL CIRCUIT COURTS TO ADMINISTER OR PROCEED IN EQUITY CAUSES, IN DISREGARD OR VIOLATION OF FEDERAL STATUTES, AND THE RULES OF PROCEDURE PRESCRIBED BY THIS COURT NOR WITHOUT JURISDICTION OVER THE PERSONS WHOSE RIGHTS OR PROPERTY IS SOUGHT TO BE AFFECTED.

"Generally, if not universally, equity jurisdiction is exercised *in personam* and not *in rem*, and depends upon the control of the court over the parties by

reason of their presence, or residence, and not upon the place where the land lies in regard to which relief is sought."

Hurt vs. Sansom, 110 U. S. 151–154.

Equity jurisdiction in the Circuit Court depends exclusively on the constitution and laws of the United States.

Cary vs. Curtis, 3 How. 237.
Sheldon vs. Sill, 8 How. 441.
Scott vs. Sandford, 19 How. 393.

Remedies at common law and equity are distinguised, and jurisdiction in equity declared to be uniform throughout the United States, without modification from state legislation or practice in.

United States vs. Howland, 4 Wheat. 108.
Livingston vs. Story, 9 Pet. 632, 655.
Green vs. Creighton, 23 How. 90.
Bein vs. Heath, 12 How. 168.
U. S. R. S., sec. 913.

In Gaines vs. Relf, 15 Peters, 9, it was claimed that a federal statute adopted May 26, 1824, had conferred on the federal courts in Louisiana authority to disregard regular practice in equity and resort to the practice in the state courts; and the court again declared that federal courts in Louisiana "are bound to proceed in equity causes according to the principles, rules and usages which belong to courts of equity as contradistinguished from courts of common law." *Affirming Livingston vs. Story ex parte Poulteny vs.*

City of Lafayette, 13 Peters, 474, and ex parte Myra Clark Whitney, 13 Peters, 404.

There is no pretense that the decree appealed from is not an attempt to proceed in equity, or that the proceeding was conducted "according to the principles, rules and usages which belong to the courts of equity as contradistinguished from courts of common law."

Nor can it be denied that the proceeding indicates "the settled determination * * * not to suffer chancery practice to prevail in the Circuit Court of Louisiana in equity causes, in total disregard of the repeated decisions of this court and the rules of practice established by the Supreme Court to be observed in chancery cases."

Counsel for mover has attempted to excuse his practice by printing an alleged rule of the Circuit Court (page 7, *et seq*). The answer is, the pretended rule, if authentic or in force, is no part of the record, and if it was, is an attempt of the Circuit Court to defy the rules in equity prescribed by the Supreme Court, and adopt State procedure in their place, and therefore void and worthless.

There is some misty attempt on the part of the mover to escape from equity, and make his case a case at law, by reference to his understanding of the English *statute merchant* and *statute staple*. We had supposed that these forms of security, with the remedies attaching, rested upon acts of parliament and not upon common law, and at most, provided for a confession of *the*

debt due, and in no manner bound real estate, except where taken into possession under some form of writ, [redacted] the equivalent of *elegit*, giving the creditor nothing better than "*quasi* the freehold" (*2 Vent. 327*), to be terminated by satisfaction of the debt by profits resulting from possession, by payment, or extinguishment of the debt in any other manner, *2 Vent. 325.*

We are also surprised that it should be claimed that "executory process" in Louisiana resembles, in any respect, the English "writ of extent." Also, that the writ of extent is a writ available to any creditor to carry into effect, *statute merchant* or *statute staple* confessions. It has been supposed that this writ is exclusively a Crown writ, used in aid of the collection of crown dues, and always based on proof of indebtedness to the Crown; that it can on y issue out of the Exchequer "in chief" or "in aid." "In chief," when it is issued directly against the crown debtor; "in aid," when it is issued against the *debtor of the Crown debtor*, in order that the crown debt may be paid from debts due to the crown debtor, *West on Extent, 15*, Manning, Ex. Pr. 3–4–5. Proceedings under the writ *extendi facias* were never *ex parte;* there must be an inquest by the very command of the writ. We believe the writ was never used in this country, even in colonial days. Certainly, the acts of Parliament, on which it rests, never were in force in this country after the revolution. It is also difficult to comprehend what *statute merchant, statute staple*, or the writ of *ex-*

tendi facias, or the practice under them have to do with this controversy.

The contention that the Circuit Court, if it had been authorized to issue executory process, had no authority to make the decree and issue the writ in this cause for want of the requisite proof in the required authentic form, is not frivolous.

It appears on the face of the mortgage that it is given to secure advances. It is true several promissory notes are named as payable to Richardson or order, but the mortgage or "confession of privilege" is *not for the notes alone*, but to secure the mortgagees, Richardson and Shattuck & Hoffman, as *joint mortgagees*. Not alone to secure the payment of the notes, but to secure the performance of a *private contract*, made part of the transaction *with the notes*, and presumably affecting the obligation of the notes and the character of the obligation which the mortgage was intended to secure.

This act is recited to be under private signature, without the intervention of any notary public and two witnesses, nor is it identified with the mortgage, except by very vague recital, showing that as between Richardson, Shattuck & Hoffman and Fleitas, a complicated dealing was contemplated, in which the indebtedness might be either way, and might place the parties in such relation to each other that Fleitas, the *debtor* in the first instance, might become the *creditor*

of the other parties, by the operation of the forced consignments of produce contemplated by the private agreement. At least, a statement of book accounts between the parties would at all times, become indispensable to ascertain *who was the debtor*, or how much was due. This private act, is one of the devices resorted to to conceal the real extent of oppression in the transaction from public inspection, scrutiny or condemnation. The circuit court did not see this contract in any form of proof, when considering whether it would make the decree. It was not presented by the plaintiff, because, not being in authentic form, it would have been fatal to the application. Fleitas could not present it, because the decree was clandestine as to him.

What counsel did do was to present the court authentic evidence that a *private act* or contract, affecting the relation of all parties to the mortgage, existed, but no evidence of the character or contents of the convention.

This private act was, after decree, presented to the court, and is printed on page 15, *et seq.*, of the record, by which it appears that Shattuck & Hoffman figure as agents of both mortgagor and mortgagee, and that under the contingency of a threatened overflow of the Mississippi river in 1884, the money, or a part of it at least, was to be withheld from Fleitas entirely. The notes and the contract are still in original hands, and no equities have intervened in favor of any third holder of the notes or contract.

In order to warrant "executory process," the evidence must be not only "authentic" in every step, but sufficient to show the exact relation of the mortgaged premises to the debt sought to be secured, and to the plaintiff, who applies for the process.

French vs. Mechanics' and Traders' Bank, 4 An. 152.

Yeates vs. Phipps, 5 An. 124.

Chamblis vs. Atchinson, 2 An. 488.

1 Hennen's Digest, 647, et seq.

There is not one particle of authentic evidence of the demand for payment and the refusal of Fleitas to pay, which seems necessary under the law of Louisiana, and is usually established by notarial demand, in the presence of two witnesses, and proper protest. Counsel for Fleitas know of no demand for payment ever having been made; and most certainly no proof of such demand and default was demanded by the Judge, and none produced.

There are other manifest deficiences in proof, apparent on the face of the record, which it is unnecessary to notice at this time, as enough has been set forth to show that there is a serious contention in the case to be presented on the regular trial.

Perhaps the best test of the utter insufficiency of the authentic proof to satisfy even a Louisiana state court, is to waive the question whether the joint mortgagees can sever in an attempt to foreclose by

"executory process," and consider the case as it would stand if Shattuck & Hoffman had attempted to foreclose by this process. How could the court, by an inspection of the evidence, as presented to the Circuit Court, determine whether there was any default of the mortgagor to them, or whether there was any indebtedness to warrant the cut-throat process, or whether it would not be guilty of an act of oppression if it sent out the writ? The counsel who applied for this decree seems to have realized this defect in proof, and attempted to avoid it by giving Shattuck & Hoffman some kind of amicable notice of their intention: why, is not apparent.

The transcript of record filed here was directed, procured, and filed by the appellee, and never inspected by the appellant until he obtained a printed copy from this Court. There is a mass of depositions in a proceeding before the master, in an irregular reference that ought not to have been certified up; but there is diminution of the actual record in that the writ issued in the cause is not here by copy, as it ought to have been.

We have procured a duly certified copy of the writ to file in this court, in order to complete the record, and as it is not printed with the record, we print it below in full as certified.

UNITED STATES OF AMERICA,

CIRCUIT COURT OF THE UNITED STATES,

Fifth Judicial Circuit and Eastern District of Louisiana.

GILBERT M. RICHARDSON,
vs
F. B. FLEITAS. } No. 11,722

THE PRESIDENT OF THE UNITED STATES.

To the Marshal of the United States for the Eastern District of Louisiana,—GREETING:

You are hereby commanded to seize and take into your possession according to law the property described in the petition herein, as follows: including the buildings, fixtures and all improvements and appurtenances situated thereon, to-wit:

FIRST. A certain tract of land or plantation known as the "Myrtle Grove," situated in the Parish of St. Bernard in the State of Louisiana, on the left bank of the river Mississippi, at about two and one-half leagues below the City of New Orleans, measuring about twenty arpents more or less front on said River, but on a line measuring at right angles from the intersection of the levee with the lower side, measuring nineteen arpents and twelve toises in width, and having on the lower side line which separates it from the lands of Ducros a depth of two hundred and thirty-one and one half arpents, and on the upper side line which separates it from the property of Gabriel Villeré, a depth of one hundred and ninety-seven and one-third arpents; both rear lines diverging four degrees fifty-four minutes and thirty seconds and running to the property of Antoine Michand, which bounds said plantation in the rear; being the property which said F. B. Fleitas acquired from L. E. Lemarie by act passed January 7th, 1882, recorded in Book No. 15 fol. 121-123 of the records of Conveyances of St. Bernard Parish, La.

SECOND. A sugar plantation situated in St. Bernard Parish, at about seven miles below the City of New Orleans on the left bank of the river Mississippi, measuring about nineteen arpents front on said river by a depth extending up to Lake Borgne, bounded on the upper line by property belonging to Messrs. Erreville F. Villeré and Denis Villeré, and on the lower line by the plantation of A. W. Walker, being the property which the said F. B. Fleitas acquired from Mrs. B. Fleitas by act of sale dated Apl. 28, 1877 and registered in Book of Conveyances No. 13 p. 194 of the records of St. Bernard Parish, La., and known as the "Corinne" plantation: and also all the

engines, boilers, kettles and other machinery and all other property of whatsoever name or description immovable by destination then on or that might be thereafter placed on or attached to said plantations or either of them.

To satisfy the amount of complainant's demands as set forth in the bill and petition herein, to wit: Twenty-seven thousand two hundred and sixteen dollars with interest on Twenty-five thousand and two hundred dollars thereof at eight per cent. per annum from January 1st, 1888, and on Two thousand and sixteen dollars thereof at five per cent. from January 1st, 1888, and five per cent. attorney's fees on said amount so in suit, and all costs.

Said Sale to be for cash without appraisement, and said sale to be stayed until the further orders of the Court under its order dated June 29th, 1888, on the Bill herein. And what you do in the premises you make due return thereof together with this writ to our said Court according to law.

WITNESS, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 22d day of November, A. D. 1888.

[Seal]

(Signed) E. R. HUNT,

Clerk.

CLERK'S OFFICE: I certify that the foregoing is a true copy of the original Writ of Seizure and Sale, issued in the case of Gilbert M. Richardson versus F. B. Fleitas, and placed in the hands of the U. S. Marshal for the Eastern District of Louisiana, and is not included in the Transcript of Record, as made for the U. S. Supreme Court.

WITNESS, my hand and seal of said Court, at the city of New Orleans, this 11th day of January, 1889.

[Seal] E. R. HUNT,

Clerk.

NOTE—The order staying the sale was revoked before the appeal was granted.

We respectfully submit that a decree that will warrant this writ must be a final decree, so far as the land affected is concerned.

If it was not final at the moment of rendition, when, in the name of all decent and respectable jurisprudence, will it become final?

Will it reach finality only after it is executed, and this wonderful writ, a relic of a dark and oppressive age, has run its course and performed its mission, and only become reviewable when review is useless and a mockery ?

We urgently contend that the appeal should be sustained, and that the issues of law to be determined are most serious in character and importance, and should not de declared frivolous on a summary irregular trial and hearing. That the motion should be overruled, and the cause allowed to stand for regular trial and hearing in its order.

All of which is respectfully submitted.

J. R. BECKWITH,

Counsel for Appellant.

Supreme Court of the United States

OCTOBER TERM, 1888.

No. 1,454.

FRANCIS B. FLEITAS, APPELLANT,

versus

GILBERT M. RICHARDSON.

The appellee, Gilbert M. Richardson, through his undersigned counsel, moves the Court to dismiss the appeal taken in this cause, and to affirm the judgment.

The ground for dismissal is, that the decree appealed from is not a final decree.

The ground for affirmance is, that the evidence on which the order for executory process is based, justified such order, and the contention that such evidence is not *authentic*, has no foundation.

The above motion will be submitted to the Court on Monday, January 28, 1889, at 12 M., or as soon thereafter as the Court will entertain the same.

THOS. J. SEMMES,
of Counsel for Appellee.

BRIEF ON MOTION TO DISMISS.

Appellee filed a bill in equity praying for an order of seizure and sale of certain lands in the parish of St. Bernard. This order is based on an authentic act of mortgage dated 28th January, 1884, and on two promissory notes for $12,500 each, with interest coupon notes attached, drawn by the appellant to the order of the appellee, and dated 28th January, 1884. The notes and coupons are identified with the mortgage by the "*ne varietur*" of the notary, before whom the act of mortgage was passed. These notes, and a duly certified copy of the mortgage, were filed with the bill, as part thereof, and constitute the evidence on which the order of seizure and sale was granted.

The proceeding is, what is termed in Louisiana, executory process; in using it, the creditor is said to proceed "*via executiva*": when an ordinary suit is brought, to recover judgment, such proceeding is called a proceeding "*via ordinaria.*"

The Code of Practice says, Article 98: "The proceedings are ordinary when citation takes place and all the delays and forms of law are preserved.

"They are executory when seizure is obtained against the property of the debtor, without previous citation, in virtue of an act or title importing confession of judgment, or in other cases provided by law."

Other articles of the Code of Practice, on this subject, provide as follows:

Art. 732. "Executory process can only be resorted to in the following cases:

"1st. When the creditor's right arises from an act importing a confession of judgment, and which contains a privilege or mortgage in his favor;

"2d. When the creditor demands the execution of a judgment which has been rendered by a tribunal of this State, different from that within whose jurisdiction the execution is sought. The proceeding, by provisional seizure (attachment), or *in rem*,

resembles in some sort the executory process, but should not be confounded with it, as they are subject to different rules."

Art. 733. "An act is said to import a confession of judgment in matters of privilege and mortgage, when it is passed before a notary public, or other officer fulfilling the same functions, in the presence of two witnesses, and the debtor has declared or acknowledged the debt for which he gives the privilege or mortgage."

Art. 734. "When the creditor is in possession of such an act, he may proceed against the debtor or his heirs, by causing the property, subject to the privilege or mortgage, to be seized and sold, on a simple petition, and without a previous citation of the debtor, in the manner laid down in the third paragraph, second section, third chapter of the first part of this code."

Art. 735. "In obtaining this order of seizure, it shall suffice to give three days' notice to the debtor, counting from that on which the notice is given, if he resides on the spot, adding a day for every twenty miles between the place of his residence and the residence of the judge to whom the petition has been presented."

Art. 738. "The debtor, against whom this order of seizure shall have been rendered, may obtain an injunction to suspend the sale, if before the time of sale he files in the court issuing the order his opposition in writing, alleging some of the reasons contained in the following article, and of which he shall swear to the truth."

Art. 739. "The debtor can only arrest the sale of the thing thus seized by alleging some of the following reasons, to-wit:

"1st. That he has paid the debt for which he is sued;

"2d. That it has been remitted by the creditor;

"3d. That it has been extinguished by transaction, novation, or some other legal manner;

"4th. That time has been granted to him for paying the debt, although this circumstance be not mentioned in the contract;

"5th. That the act containing the privilege or mortgage is forged;

"6th. That it was obtained by fraud, violence, fear, or some unlawful means;

"7th. That he has a liquidated account to plead in compensation to the debt claimed;

"8th. And, finally, that the action for the recovery of the debt is barred by prescription."

ART. 740. "When the Judge grants an injunction on the allegation under oath of any of the reasons mentioned in the preceding article, he shall require no surety from the defendant, but he shall pronounce summarily on the merits of his opposition, if the plaintiff requires it, as is explained below."

Although an order of seizure and sale is granted on the creditor's petition, if the Judge is satisfied with the authentic evidence submitted to him, yet the order does not become operative, nor can the writ of seizure and sale be issued until a notice issued by the clerk of the Court has been served on the debtor, warning him that his property will be seized unless he pays the debt due by him. The debtor is allowed a delay of three days after the service of this notice, and further delay of one day for every twenty miles that his domicile may be distant from the Courthouse; until such delay has expired, the clerk cannot deliver to the sheriff the writ of seizure and sale.

Hart vs. Pike, 29 La. An. 262.

Billgery vs. Ferguson, 30 La. An. 84.

If the debtor resists the order of seizure and sale, he can do so in two modes:

1st. He can appeal from the order.

2d. He can arrest its execution by injunction, and if the injunction be granted for any of the reasons specified in Article 739 of the Code of Practice, the debtor is not required to give any bond or surety to obtain the injunction.

In case of an appeal from the order of seizure and sale, the only question which the Appellate Court can examine, is, whether or not the evidence presented to the Judge, at the time he granted the order, justified him in so doing; in other words, the question for the Appellate Court is, was the act of mortgage *authentic;* that is to say, was it passed before a notary in the presence of two witnesses; if so, was the specific debt, secured by the mortgage, identified therewith?

Dodd vs. Crain, 6 Rob. 58.

Wood & Roane vs. Wood, 32 La. An. 804.

But it is well settled in Louisiana, that an order granting executory process has none of the characteristics of a final judgment, although an appeal is allowed from such order.

The most recent case on the subject, is to be found in 34 La. An. p. 1003, Mitchell vs. Logan.

In that case it was urged that the order granting executory process was equivalent to a judgment, and, therefore, into it was merged the original cause of action.

The Court say, that the proposition involved in the contention is, that an order of seizure and sale, "is a judgment "in the full and legal sense of the term. It must be difficult "to conceive of a more absolute legal fallacy, and an examination of the authorities cited in its support, by the plaintiff's "counsel, satisfies us that this legal heresy finds no foundation "in our jurisprudence. 12 M. 695; 2 N. S. 32; 6 A. 446.

"To the assertion that any element of a judgment enters "into the executory process, the legal mind suggests a ready "and easy answer. That the executory process lacks the following elements of a judgment:

"1st. It is not preceded by citation, the foundation of a "judgment.

"2d. It creates no issue.

"3d. It decides no issue and requires no answer and no "default.

"4th. It adjudicates to the plaintiff no right which is not "secured by his notarial act, nor deprives him of any thus "secured.

"5th. Its inscription in the mortgage office will, therefore, "operate no judicial mortgage.

"6th. If the property mortgaged, and seized and sold "under it, does not bring a price sufficient to satisfy the amount "of the claim, the creditor cannot issue execution on such balance without first obtaining judgment thereon contradictorily "with his debtor.

"7th. It cannot support the plea of *res adjudicata* or *lis* "*pendens*.

"Other differences could be enumerated, but it would be an "idle task, as we consider the point well settled, in our jurisprudence, which recognizes in such orders but one element of

"a judgment, namely, the right of appeal, which can be taken "either from the order of the Judge or from his refusal to grant "the process. 16 La. 254, Harvard vs. Voorhies; 13 An. 256, "Riley vs. Christie; 28 An. 186, Rousseau vs. Bourgeois; 32 An. "977, State ex rel. Wise vs. Taylor, Judge."

In the case of Levy vs. Fitzpatrick, 15 Pet. 171, the Court had occasion to consider the nature of executory process in Louisiana. Mr. Justice McKinley, as the organ of the Court, said:

"Had this proceeding taken place before a Judge of competent authority in Louisiana, the debtors might have appealed from the order of the Judge to the Supreme Court of that State; and that Court might, according to the laws of Louisiana, have examined and decided upon the errors which have been assigned here. But there is a marked and radical difference between the jurisdiction of the Courts of Louisiana and those of the United States. By the former, no regard is paid to the citizenship of the parties, and in such a case as this no process is necessary to bring the debtors before the Court. They having signed and acknowledged the authentic act, according to the forms of the law of Louisiana, are for all the purposes of obtaining executory process presumed to be before the Judge. Code of Practice, arts. 733 and 734. An appeal will lie to the Supreme Court of Louisiana from any interlocutory or incidental order, made in the progress of the cause, which might produce irreparable injury. State vs. Lurio, 9 Mart. N. S.; Broussard vs. Frakenshein, 4 Mart. R. 497; Gurlin vs. Agent, 3 N. S. 498; Seghers vs. Antheman, 1 N. S. 73; State vs. Pitot, 12 Mart. R. 485."

After referring to the eleventh section of the judiciary Act of 1789, on the subject of jurisdiction, and to the twenty-second section of the same act, which provides for writs of error from final judgments, the Court say, "It is obvious that the debtors were not before the Judge in this case by the service of process or by voluntary appearance, when he granted the executory process. In that aspect of the case then, the order could not be regarded as a final judgment within the meaning of the twenty-second section of the statute. But was the order a final judgment, according to the laws of Louisiana? The fact of its being subject to appeal does not prove that it was, as has already been

shown. Nor could it *per se* give to the execution of the process, ordered by the Judge, the dignity of a judicial sale. Unless at least three days' previous notice were given to the debtors, the sale would be utterly void." Grant vs. Walden, 5 La. 631.

"This proves that some other act was necessary, on the part of the plaintiffs, to entitle them to the fruits of their judgment by confession; and in that act is involved the merits of the whole case; because, upon that notice, the debtors base a right to come into Court and file their petition, which is technically called an opposition, and set up as matter of defense everything that could be assigned for error here, and pray for an injunction to stay the executory process till the matter of the petition could be heard and determined. * * * From this view of the case, we think the order granting executory process cannot be regarded as anything more than a judgment *nisi*. To such a judgment a writ of error would not lie."

The question of jurisdiction, referred to in the opinion of the Court just quoted, does not embarrass us in this case, as the defendant was an inhabitant of Louisiana, on whom personal notice of the order of seizure and sale was served 30th June, 1888, (p. 12), and on the same day he applied for an appeal and a writ of error, (p. 13). Besides, in equity cases, the Circuit Court is authorized to proceed to enforce liens and mortgages against real estate, situated within the District where suit is commenced, even though the defendant is not an inhabitant of such District, and cannot be personally served with process.

R. S., Section 738.

The rule of the Circuit Court, on the subject of executory process, adopted after the appeal taken in the case of Marvin vs. Lally (17 Wall.), is as follows:

"It is ordered by the Court, that petitions for orders of seizure and sale, and the orders thereon, be docketed on the equity side of this Court, and that the defendant or defendants in such executory process, be authorized to set up and avail

themselves of such defences, and obtain in this Court such relief, against the order of seizure and sale, and the process thereon, as they might be entitled, under the law of Louisiana, in the State Court. And such defences and relief in this Court shall be allowed and granted, upon opposition, in the form of a brief cross-bill, and that the fact of applying for the order of seizure and sale, by the plaintiff therein, shall be deemed a waiver on his part of any further notice from, and of all delay on the part of, the defendant or defendants, who shall apply for an injunction, for any of the causes for an injunction set forth and allowed in Article 739 of the Code of Practice of the State of Louisiana, leaving all other causes for injunction in such cross-bill to the usual course of proceedings in equity; and it is further ordered that, on injunction for any of the causes mentioned in said Article 739 of the Code of Practice, such injunction shall continue as a matter of course until the trial on said cross-bill, and that the defendant or defendants in the executory process may waive answers under oath to such cross-bill filed by him or them."

This rule prescribes that the defendant may avail himself of such defences, and obtain such relief, against the order of seizure and sale, and the process thereon as he might be entitled to under the law of Louisiana, in the State Court, and such relief will be granted on an opposition in the form of a cross-bill.

Therefore, any defense to the order of seizure and sale, is to be asserted by a cross-bill, and it is immaterial whether the defense be that the order has been made on evidence not authentic, or any other defense.

In this case, the appellant appeared on 30th June, 1888, and filed a petition wherein he prayed for a writ of error or appeal.

This was refused, (p. 13). On November 19, 1888, appellant filed a motion to quash and vacate all orders made in the case, on the ground that the Court had no jurisdiction to proceed by way of executory process, and if it had, that the plaintiff's petition presented no case in proper form of evidence to warrant the order of seizure and sale, and in case the motion

was denied, the defendant prayed for the allowance of a suspensive appeal (pp. 13-14.

The appellee, on 24th November, 1888, moved the Court to strike from its files the motion above mentioned, on the ground that it was not allowed by the rules of the Court or by the law of Louisiana, p. 17.

The rule of Court, which has been embodied in this brief, required the defendant to set up any defense he might have by cross-bill.

On 24th November, 1888, the Court refused the motion to strike from the files, and also the motion to quash, but allowed a suspensive appeal, and referred the cause to a master to ascertain the amount of the bond, p. 18.

On December 7th, 1888, the Court, "on further considering the whole matter with reference to the order or decree awarding executory process herein, and the defendant's application for appeal therefrom, doth now order that so much of the order of 29th June, 1888, awarding executory process herein, as directs the marshal to stay the sale of the property directed to be seized, till the further order of the Court, be stricken out, and that all orders made, subsequently to the date of defendant's application for an appeal on June 30th, 1888, except the order of reference to the master to report the facts upon which the amount of the bond could be determined and fixed, be revoked, and that an appeal to operate as a supersedeas be allowed to said defendants *nunc pro tunc* as of said 30th day of June, 1888, according to his petition *then presented*, on his giving bond as required by law, with good and solvent security in the sum of $1,000. And it is further ordered that the marshal on the filing of such bond release from seizure the property he has seized herein," etc., p. 28.

An examination of the appeal bond shows that it was given

on an appeal "taken to the Supreme Court of the United States from and to reverse the decree rendered on 29th June, 1888, by the Circuit Court," etc., p. 28.

So that the case is presented to this Court, as if the appeal had been allowed on 30th June, 1888, from the order granting executory process on 29th June, 1888, modified, however, by eliminating that part of the order which stayed the sale of the property seized. The order thus amended, is as follows: "Let a writ of seizure and sale issue herein as prayed for and according to law, to satisfy complainant's demands, as set forth in the foregoing bill and petition," p. 4.

The Circuit Court seems to have taken as its model the proceedings in Marvin vs. Lally, (17 Wallace, p. 15.) But this case differs from that, inasmuch as it is simply an appeal from the order of 29th June, 1888, and, therefore, it is not affected by the proceedings subsequent to that date, all of which have been vacated. The case is to be determined on the petition for executory process and exhibits, and on the order granting the writ of seizure and sale, with the stay clause eliminated. In the case of Marvin vs. Lally, there was an *opposition* filed and a decree "that the *objections and answers* of the defendants to the order of seizure and sale be over ruled," (p. 16). And in that case it appears that the appeal was taken from "the order for executory process, 28th March, 1872, and *made final* on 3d June," the day on which the objections and answers were over-ruled, p. 16.

The opinion in the case says:

"If there was any doubt as to the finality of the original order, there can be none that it became final when the *answer and objections* were over ruled; that order seems to have been made contradictorily with the debtors; their opposition was over-ruled and their property decreed to be seized and sold to pay their debts."

The Court thus draws a distinction between the case of Levy vs. Fitzpatrick and the one under consideration, and proceeds

thus: "Incidentally, it is true, the Court held the order (in the Fitzpatrick case) not to be a final judgment, according to the laws of Louisiana. But this was said of the *original* order, without the three days' notice, and without *any act on the part of the debtors.* In the present case the debtors appeared by their opposition, which was over-ruled, and the original order made final," p. 18.

The writ of error in the Fitzpatrick case ought to have been dismissed, on the ground that the executory process for the foreclosure of a mortgage was an equity proceeding, which could not be reviewed on writ of error, but the point was not presented, and the decision of the Court is based on the ground that the judgment was a judgment *nisi*, and not a final judgment.

Is it not clear that the nature of the judgment must be determined by the jurisprudence of Louisiana? In the light of that jurisprudence what element of a final judgment is to be found in an order for executory process? The right of appeal given to the debtor is the only characteristic which imparts to it a resemblance to a final judgment.

The truth is, our executory process resembles, in some degree, the common law securities called statute merchant and statute staple; both were securities for money: the one entered into before the chief magistrate of some trading town, pursuant to the statute of Edward I; the other pursuant to the statute of Edward III, before the mayor of the staple, that is to say, the grand mart for the principal commodities of the Kingdom, formerly held by act of Parliament in certain trading towns, and from whence the security is called statute staple, (2 Black. Com. 160.) In The King vs. Giles, 8 Price, 316, Mr. Baron Wood explains the course of proceeding in a statute staple. He says: "The first step taken is this: There is a recognizance taken acknowledging the debt; that recognizance is made by the debtor before the mayor of the staple. By

a subsequent statute it was provided that it might be made before other authorities. By his recognizance the debtor binds himself, his lands and goods, to the payment of the debt at a certain time. If the conusor wants to have it executed, he gets it certified *into the Court of Chancery*. He thereupon sues out a writ of extent, directed to the sheriff, requiring him to seize the debtor's lands and goods into the King's hands, (not into the hands of the conusor). If the sheriff return that he has seized into the King's hands, and all this has been regularly done, there is then an award or judgment that the lands and goods be delivered to the conusor to hold till his debt be satisfied."

Chief Baron McDonald, in King vs. Allmott, (16 East., p. 280 note), says that statutes merchant and staple were in the time of Henry VIII common assurances perhaps more in use than judgments.

Lord Coke informs us that a statute staple is not to be preferred to a judgment. His language is: "*Nota reader*,—if A is bound in a recognizance or statute merchant or staple, and afterwards a recovery is had against A in an action of debt, and A makes his executors and dies, his executors are bound by the law to pay the debt due upon the recovery, although it be *puisne*, before the debt due by recognizance or statute; because, although both are records, yet the judgment in the King's Court, upon judicial and ordinary proceedings, is more notorious and conspicuous, and of more high and eminent degree, than a statute or recognizance taken in private and by consent of the parties, and therefore preferred in judgment of law."

4 Rep. 59; 6 Rep. 45, Higgins' case; King vs. Giles, 8 Price, 351, Baron Graham.

The statute merchant or staple, it is perceived, was acknowledged before a public officer; on application to the Court of Chancery, *ex parte*, a writ of extent was issued against all the lands, goods and chattels of the conusor. To obtain execu-

tory process, there must be a recognizance of the debt before a notary and two witnesses, and the contract thus recognized must confer a privilege or mortgage, and therefore when the contract is presented to the Court, the writ which issues is not directed against all the property of the debtor, but against the thing on which the privilege or mortgage exists.

A sort of statute staple existed in Massachusetts, whereby parties bound themselves to pay sums of money to the conusee in the form prescribed by the statute. The statute of 1782, chapter 21, provides that a recognizance of the description mentioned might be entered into before a justice of the peace, and the same justice was authorized to issue execution thereon to the sheriff. In the case of Albu vs. Bank, (8 Mass., 83), the Court say: "Now, a recognizance is a bond, and something more; it is a contract of the most solemn nature, and an execution which issues upon it, as to the power which it confers, and the duty which it imposes upon an officer, are of the same nature as an execution which issues from a court of record."

The difference between the Louisiana executory process and the Massachusetts executory process, just described, is that the issue of the execution of the Massachusetts justice of the peace, on the recognizance taken by him, is a *ministerial* act, as stated by the Court in the case quoted, whereas the order for executory process in Louisiana is a judicial act. In Massachusetts the execution is directed against any property of the debtor; but in Louisiana the executory process is directed against the specific property on which the creditor has his lien or privilege.

The remedy of a creditor on a Massachusetts recognizance may be debt as well as *scire facias*.

Green vs. Dana, 13 Mass. 493.

Commonwealth vs. Green, 12 Mass. 1.

Same vs. Stebbins, 4 Gray 26.

Curtin vs. Batholomy, 8 Allen, 336.

So, in Louisiana, the creditor may resort to an ordinary

suit to enforce his mortgage, or he may proceed *via executiva*.

At the common law a recognizance, though not of itself a record must be of record before it can avail the conusee, so that when it is put in suit, it must be declared on as of record.

Tarbell vs. Guy, 4 Gray, 445.

In Louisiana the notary is the officer before whom the record is made up, and the production of a certified copy constitutes authentic or solemn evidence of the debt and mortgage; on this evidence the Court orders execution to issue, but it is not necessary in order to maintain an ordinary suit on the debt, that the creditor should allege the existence of any other record than that made by the notary.

I have already quoted authority to establish that the fiat of the Judge ordering execution to issue, though a judicial act has none of the elements of a final decree within the meaning of the judiciary act, and I have shown that the rule of the Circuit Court prescribes the method of setting up any defense which the debtor may have.

BRIEF ON THE MOTION TO AFFIRM.

The only question to be discussed is, whether there was authentic evidence of the debt and mortgage submitted to the Judge when he granted the order of seizure and sale.

That the act of mortgage is an authentic act importing confession of judgment is not disputed.

That the notes sued on are identified with it, is not disputed —all of said notes have the following marks of identification written across the face thereof:

"*Ne varietur:* Secured by mortgage and crop lien executed before me this day, New Orleans, January 28th, 1884.

BENJAMIN ORY, Notary Public."

The mortgage contains a stipulation that in the event that any portion of the debt secured by it is not paid when due, it shall be lawful for the mortgagees, or any holder of the notes,

to cause the mortgaged property to be seized and sold for cash without appraisement, "hereby confessing judgment in favor of said mortgagees, and of such person or persons as may be the holder of said promissory notes, and all assigns of Shattuck & Hoffman, *for the full amount thereof, capital and interest*, together with all costs, charges and expenses whatever," (p. 7). By another stipulation, attorneys' fees are allowed in case of suit to foreclose the mortgage, and are fixed at five per cent., pp. 7–8.

I cannot imagine any ground for this appeal. It is suggested, however, that Shattuck & Hoffman, merchants in New Orleans, who made advances to Fleitas, the appellant, are also secured by this act of mortgage, and there is no authentic evidence of the dealings between them and Fleitas, nor of the amount due them on settlement of accounts.

If this were a suit by Shattuck & Hoffman, to enforce their demands, the objection would be good, because the articles of agreement entered into between the mortgagee and Shattuck & Hoffman, are not incorporated in the mortgage, and are not evidenced by an authentic act. But the relations of Shattuck & Hoffman to the mortgagor, are not involved in this suit, nor does it appear that there is anything due to, or claimed by, Shattuck & Hoffman. The only demand set up in these executory proceedings consists of two promissory notes for $12,600 each, one due 1st January, 1888, and the other 1st January, 1889, with interest coupons attached; these two notes being part of a series of five notes for $12,600 each, given for a loan of $63,000, in money; three of the notes were paid, leaving the two described in the petition, together with the interest, unpaid. It is perceived, therefore, that the debt is for a fixed sum; it is not necessary to go outside of the act of mortgage to establish it.

On examination of the mortgage, the Court will perceive that it was intended as a double security, first, to secure the loan of $63,000, represented by five notes of $12,600 each, with interest coupons attached; second, to secure advances to be

made by Shattuck & Hoffman, and the performance of the contemporaneous agreement between the mortgagor and Shattuck & Hoffman. A clause in the act of mortgage gives priority to the indebtedness due to Gilbert M. Richardson, the appellee, over that to Shattuck & Hoffman, p. 9.

In other words, a first and second mortgage are contained in the same instrument; Richardson is first mortgagee to the extent of the five notes, with coupons, representing the sum of $63,000, and Shattuck & Hoffman are second mortgagees.

It is the first mortgage which the appellee seeks to foreclose in this proceeding.

Notice of this proceeding was given to Shattuck & Hoffman, but it was unnecessary.

Soniat vs. Miles, 32 La. An. 164.

The only evidence required to obtain executory process is the act of mortgage, with the notes secured by it.

Renshaw vs. Richards, 30 La. An. 398.

Dejean vs. Hebert, 31 La. An. 730.

City of New Orleans vs. Pigniolo, 29 La. An. 835.

Miller, Lyon & Co. vs. Cappel, 36 La. An. 265.

This appeal is not returnable into this Court until October, 1889, but it is now settled that the appellee may, before the return day, file the transcript and make a motion to dismiss.

Ex parte Russell, 13 Wall. 671.

Thomas vs. Wooldridge, 23 Wall. 288.

Even if the motion to dismiss be denied, the Court will look into the record and grant the motion to affirm, if the appeal appears to be taken for delay.

Milos vs. Williams, 104 U. S. 557,

Evans vs. Brown, 109 U. S. 180,

In conclusion, I call the attention of the Court to the fact that the action of the Judge of the Circuit Court can be justified on no other principle than that the order granted on 29th June was a decree *nisi*.

If it was a final decree, what right had he to change or modify it, or strike out any part of it, after the term at which it was rendered, had expired?

The original order was granted at the April term; the order striking out a part of that order was made at the November term.

If the original order of 29th June, was a final decree, what right had the Court, in November following, to grant an appeal with supersedeas, and command the marshal to release from seizure the mortgaged property? p. 28.

This was done notwithstanding this Court said in Boyle vs. Zacharie, (6 Pet. 655): "Nothing is better settled at the common law than the doctrine, that a supersedeas, in order to stay proceedings on an execution, must come before there is a levy made under the execution; for if it comes afterwards, the sheriff is at liberty to proceed upon a writ of *venditioni exponas*, to sell the goods."

I consider it equally well settled that the Circuit Court had no power to modify, at the November term, the original order granted at the April term, if the order be a final decree.

Brown vs. Schlisten, 104 U. S. 415.
McMicken vs. Perin, 18 How. 511.
Cameron vs. Roberts, 3 Wheat. 591.

Respectfully submitted,

THOS. J. SEMMES,
of Counsel for Appellee.

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 299.

FRANCIS B. FLEITAS, APPELLANT,

versus

GILBERT M. RICHARDSON.

Appeal from the Circuit Court of the United States, Eastern District of Louisiana.

APPELLANT'S BRIEF.

This is an appeal from an ex parte decree of the Circuit Court, allowing and sending out final process in the form of an order and writ of seizure and sale, as it is termed in the statutes of Louisiana, in foreclosure of an alleged mortgage.

The proceeding is entirely statutory and peculiar to Louisiana. The Code of Practice of Louisiana is the only warrant for the procedure. It is termed "executory process," or proceedings *via executiva*, as contradistinguished from proceedings in ordinary actions termed *via ordinaria*, or with citation, issue and trial.

The articles of the Code of Practice relied on as warrant for the procedure are the following:

Code of Practice, Art. 63: "When the hypothecated property is in the hand of the debtor and when the creditor, besides

his hypothecary right, has against his debtor a title importing a confession of judgment, he shall be entitled to have the hypothecated property seized immediately and sold for the payment of his debt, including the capital, the interest and the costs pursuant to the rules provided hereafter for executory proceedings."

Code of Practice, Article 98: "The proceedings are ordinary when citation takes place and all the delays and forms of law are observed.

"They are executory when seizure is obtained against the property of the debtor, without previous citation, in virtue of an act or title importing confession of judgment, or in other cases provided by law."

Other articles of the Code of Practice, on this subject, provide as follows:

Art. 732. "Executory process can only be resorted to in the following cases:

"1st. When the creditor's right arises from an act importing a confession of judgment, and which contains a privilege or mortgage in his favor;

"2d. When the creditor demands the execution of a judgment, which has been rendered by a tribunal of this State, different from that within whose jurisdiction the execution is sought, The proceeding, by provisional seizure (attachment), or *in rem*, resembles in some sort the executory process, but should not be confounded with it, as they are subject to different rules."

Art. 733. "An act is said to import a confession of judgment in matters of privilege and mortgage when it is passed before a notary public, or other officer fulfilling the same functions, in the presence of two witnesses, and the debtor has declared or acknowledged the debt for which he gives the privilege or mortgage."

Art. 734. "When the creditor is in possession of such an act, he may proceed against the debtor or his heirs, by causing the property, subject to the privilege or mortgage, to be seized and sold, on a simple petition, and without a previous citation of the debtor, in the manner laid down in the third paragraph, second section, third chapter of the first part of this Code."

Art. 735. "In obtaining this order of seizure, it shall suffice to give three days' notice to the debtor, counting from that on which the notice is given, if he resides on the spot, adding a day for every twenty miles between the place of his residence and the residence of the judge to whom the petition has been presented."

Art. 738. "The debtor, against whom this order of seizure shall have been rendered, may obtain an injunction to suspend the sale, if before the time of sale he files in the court issuing

the order his opposition in writing, alleging some of the reasons contained in the following article, and of which he shall swear to the truth."

Art. 739. "The debtor can only arrest the sale of the thing thus seized by alleging some of the following reasons, to-wit:

"1st. That he has paid the debt for which he is sued;

"2d. That it has been remitted by the creditor;

"3d. That it has been extinguished by transaction, novation, or some other legal manner;

"4th. That time has been granted to him for paying the debt, although this circumstance be not mentioned in the contract;

"5th. That the act containing the privilege or mortgage is forged;

"6th. That it was obtained by fraud, violence, fear, or some unlawful means;

"7th. That he has a liquidated account to plead in compensation to the debt claimed;

"8th. And, finally, that the action for the recovery of the debt is barred by prescription."

Art. 740. "When the judge grants an injunction on the allegation under oath of any of the reasons mentioned in the preceding article, he shall require no surety from the defendant, but he shall pronounce summarily on the merits of his opposition if the plaintiff requires it, as is explained below:"

The appellee, supposing or being advised that he was in position to avail himself of this statutory proceeding enacted as procedure in the courts of the State, attempted to avail himself of the statute by resort to the federal court. In a paper that bears but little resemblance to any known form of bill in equity except that Richardson styles himself "your orator," he alleges that he is a citizen of New York; that Fleitas is a citizen of Louisiana; that on the 28th day of January, 1884, Fleitas, being indebted to "your orator" in the sum of sixty-three thousand dollars, made and delivered his promissory notes to Richardson, payable to his order (Richardson's) at a bank in New Orleans, with interest at the rate of 8 per cent., to mature January 1, 1885, 1886, 1887, 1888, 1889; that to secure the payment of the notes, Fleitas made an act of mortgage hypothecating two plantations in the Parish of St. Bernard, in Louisiana, one the Myrtle Grove, the other the Corinne, with description of

metes and bounds; that two of the notes, maturing respectively January 1, 1888, and January 1, 1889, with interest coupons, are due and unpaid. The act of mortgage by copy together with the notes are made part of the petition or bill, by way of exhibit, and it is alleged that the sum of $25,000 with interest, amounting in all to $27,216.00, with interest on $25,200.00 at 8 per cent., and on $2016 at 5 per cent., from January 1, 1888, with 5 per cent attorney's fees and costs, praying that the property mortgaged be seized and sold to pay that amount as demanded in the petition or bill.

A firm or copartnership, designated as Shattuck & Hoffman named in the act of mortgage made an exhibit, are referred to, with the averment that they are named in the mortgage, but "*have no interest in said notes, and your orator is informed and believes that they have no interest in said act of mortgage. Your orator has given them notice of this proceeding.*"

The bill is sworn to by one Mellon, who says he is the attorney of Richardson. Some one, in behalf of Shattuck & Hoffman, endorsed on the paper evidently before filing notice of the bill, a rather unique performance in executory proceedings.

There is no prayer for process of any kind against Fleitas, the mortgagor, nor for any accounting. This paper was filed June 29th, 1888. On the same day, without any further proceedings, the judge holding the Circuit Court rendered on the paper the following order:

ORDER.

Let a writ of seizure and sale issue herein as prayed for and according to law to satisfy the complainant's demand, as set forth in foregoing bill and petition. Let the marshal seize and take into his possession, according to law, the property described in the foregoing petition, and then let the sale of the property be stayed until the further orders of this Court.

Entered and filed June 29, 1888.

EDWARD C. BILLINGS, *Judge.*

This order was placed in the hands of the marshal of the court, who on the next day, the 30th of June, 1888, served on the mortgagor the following notice entitled in the case.

"*To F. B. Fleitas:*

"Take notice that payment is demanded of you within three days from the service hereof of the amount specified in the writ of seizure and sale, granted on the bill of complaint herein, a copy of which accompanies this notice, with interest and costs, and in default of payment within that delay, the property referred to in said bill of complaint will be seized and sold according to law, subject to the order on said bill.

"A further delay of one day for every twenty days from your domicile to this city, at which place this Court is held, is allowed you by law."

"E. R. HUNT, *Clerk*."

"CLERK'S OFFICE, NEW ORLEANS, June 30th, 1868."

Substantially the same notice required by law in Louisiana in case of *fi. fa.* on judgment at law, except in such cases the notice is signed by the sheriff.

This notice was served as appears by the return of the marshal on the date of its issue.

On the same day the defendant, Fleitas, appearing *pro hac vice*, applied to the Court by petition for an appeal to this Court with supersedeas. This was refused; upon what ground, does not appear.

The proceedings under the decree were suspended apparently by the direction of the complainant until the 22d of November, 1868, when the season's crop on the plantations had been grown by Fleitas, at his expense, when a formal writ, based on the decree, was issued and levied. The record in this cause as printed was brought up to this Court by the appellee, in aid of a motion to dismiss or affirm and did not include this writ, and therefore it did not appear in the Record as printed for the motion; but was brought up and filed by the appellant to complete this record. The following is the text of the writ as it is on file by copy in this Court:

UNITED STATES OF AMERICA,

CIRCUIT COURT OF THE UNITED STATES,

Fifth Judicial Circuit and Eastern District of Louisiana.

GILBERT M. RICHARDSON,
vs.
F. B. FLEITAS. } No. 11,722

THE PRESIDENT OF THE UNITED STATES.

To the Marshal of the United States for the Eastern District of Louisiana.—GREETING:

You are hereby commanded to seize and take into your possession according to law the property described in the petition herein, as follows: including the buildings, fixtures and all improvements and appurtenances situated thereon, to-wit:

FIRST. A certain tract of land or plantation known as the "Myrtle Grove," situated in the Parish of St. Bernard in the State of Louisiana, on the left bank of the river Mississippi, at about two and one-half leagues below the City of New Orleans, measuring about twenty arpents more or less front on said river, but on a line measuring at right angles from the intersection of the levee with the lower side, measuring nineteen arpents and twelve toises in width, and having on the lower side line which separates it from the lands of Ducros a depth of two hundred and thirty-one and one-half arpents, and on the upper side line which separates it from the property of Gabriel Villeré, a depth of one hundred and ninety-seven and one-third arpents; both rear lines diverging four degrees fifty-four minutes and thirty seconds and running to the property of Antoine Michaud, which bounds said plantation in the rear; being the property which said F. B. Fleitas acquired from L. E. Lemarie by act passed January 7th, 1882, recorded in Book No. 15, fol. 121-123 of the records of Conveyances of St. Bernard Parish, La.

SECOND. A sugar plantation situated in St. Bernard Parish, at about seven miles below the City of New Orleans on the left bank of the river Mississippi, measuring about nineteen arpents front on said river by a depth extending up to Lake Borgne, bounded on the upper line by property belonging to Messrs. Erreville F. Villeré and Denis Villeré, and on the lower line by the plantation of A. W. Walker, being the property which the said F. B. Fleitas acquired from Mrs. B. Fleitas by act of sale dated Apl. 28, 1877, and registered in Book of Conveyances No. 13, p. 194 of the records of St. Bernard Parish, La., and known as the "Corinne" plantation; and also all the engines, boilers, kettles and other machinery and all other prop-

any of whatsoever name or description [illegible] tion thereon or that might be thereafter placed on or [illegible] to said plantations or either of them.

To satisfy the amount of complainant's demands as set forth in the bill and petition herein, to-wit: Twenty-seven thousand two hundred and sixteen dollars with interest on Twenty-five thousand and two hundred dollars thereof at eight per cent. per annum from January 1st, 1888, and on Two thousand and sixteen dollars thereof at five per cent. from January 1st, 1888, and five per cent. attorney's fees on said amount so in suit, and all costs.

Said Sale to be for cash without appraisement, and said sale to be stayed until the further orders of the Court under its order dated June 29th, 1888, on the Bill herein. And what you do in the premises you make due return thereof together with this writ to our said Court according to law.

WITNESS, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 22d day of November, A. D. 1888.

[Seal]

(Signed) E. R. HUNT,
Clerk.

CLERK'S OFFICE: I certify that the foregoing is a true copy of the original Writ of Seizure and Sale issued in the case of Gilbert M. Richardson versus F. B. Fleitas, and placed in the hands of the U. S. Marshal for the Eastern District of Louisiana, and is not included in the Transcript of Record, as made for the U. S. Supreme Court.

WITNESS, my hand and seal of said Court, at the city of New Orleans, this 11th day of January, 1889.

[Seal] E. R. HUNT,
Clerk.

NOTE—The order staying the sale was revoked before the appeal was granted.

On the 19th of November, and before the levy of this writ, Fleitas, by his solicitor, again appeared in court *pro hac vice*, and moved to quash the order of seizure and sale or any process under the order, on the ground, amongst others, that on the face of the papers the Court was without jurisdiction of the proceedings, and that if it had power in any case to foreclose mortgages in the manner sought, the petition for the order on its face disclosed a condition of matters where a state court would have been without jurisdiction to issue the writ, or make the order

for the want of authentic proof, indispensable to give authority for the process, with the alternative prayer that if the proceeding was not quashed an appeal with supersedeas be allowed on bond to be fixed by the Court. To this motion and as part of the showing to aid the court the defendant made oyer and attached to his motion an original of the private agreement referred to in the mortgage, as the agreement under private signature between Fleitas and Shattuck & Hoffman, the performance of the conditions of which was secured by the terms of the mortgage made part of the petition of Richardson for the decree complained of.

This motion was set down for hearing on notice, and heard and determined on November 24, 1888, with a cross motion from Richardson to strike the motion of Fleitas with its exhibits from the files, and resulted in refusal to quash or to strike the motion from file. In granting the alternative prayer for appeal, with supersedeas, the appeal being allowed, the court ordered reference to master to take evidence to show amount of bond that should be required to operate supersedeas.

The master reported on December 6, 1888, and on the next day the Court reconsidered the entire matter back to the original order of seizure or decree and the original motion for appeal, revoked so much of the order as stayed the execution of process, revoked the order refusing an appeal, and allowed an appeal *nunc pro tunc* as of the 30th day of June, 1888, to operate supersedeas, on a bond of one thousand dollars the marshal to release seizure upon the appeal being perfected. The appeal was perfected on the 7th of December, 1888. The appellee took up the record during the October term of this Court, 1888, and moved to dismiss the appeal as premature or affirm as frivolous. This motion was refused by this Court.

The only evidence of any mortgage upon which the Circuit Court could act, in allowing or passing decree of foreclosure is a copy of a notarial act of mortgage annexed to the so-called bill

of complaint purporting to be executed by Fleitas alone, but not being joined, relates to the lands described in the bill and by its recitals given to secure not only certain promissory notes but the performance of some sort of a contract between Shattuck & Hoffman and Fleitas, the contract being recited as containing "mutual covenants, agreements and benefits, provided and contained in certain articles of agreement executed the 28th day of January, A. D., 1884, by and between said appearer and Messrs. Shattuck & Hoffman, a commercial firm composed of Albert F. Shattuck and Frank B. Hoffman, and to which reference is more particularly made, obligating himself, the said appearer and his heirs, executors, administrators and assigns, to gather and put in condition, to market as rapidly as possible, the crop of sugar and molasses that the said appearer, his heirs, executors, administrators and assigns may raise upon or control from the property herein described, during the years 1884, 1885, 1886, 1887, 1888, and during any following year or years, so long as any portion of said debt secured or intended to be secured by this act shall remain unpaid, and to ship said sugar and molasses from time to time, as the same shall be ready for market, to said Shattuck & Hoffman in New Orleans, to be by them sold on arrival at their option, and that whereas, under said articles of agreement, the said appearer expects to and may become indebted to said Shattuck & Hoffman, during such year or years, on open account or otherwise, or for money paid out and advanced to and for said appearer, in and about the making, handling, conveyance, carriage, storage, insurance and sales of said crops of sugar and molasses, but which indebtedness shall in no event exceed in the aggregate an amount equal to the said indebtedness to said Gilbert M. Richardson."

Certain stipulations are made about attorney fees, insurance premiums, pawning crops, to Shattuck & Hoffman, and Richardson, a stipulation that in case of sale of the mortgaged premises, the vendee must assume "all of the obligations, covenants and agreements to said appearer to, and with said Shattuck & Hoffman, as set forth in said articles of agreement hereinbefore referred to (the private act of January 28th," 1884), and also such as are contained and set forth in this act."

There are also stipulations as to the manner in which the proceeds of sale of crops shall be applied by Shattuck & Hoffman, the mortgage being given in terms to secure the performance of the private contract of January 28th, 1884, and the notes repre-

senting the alleged $63,000. There was also presented to the Court at the same time two notes of Fleitas, one for $12,600 and one for $12,000, with the coupon interest notes attached, marked *ne varietur*, for identification with the mortgage. The act of mortgage disclosed the fact that the entire transaction was effected and controlled by a contract under private signature, not authentic; yet this was not produced to the Court by the complainant, doubtless for the reason that it would have defeated the application for the writ by the bare presentation.

The bare inspection of the mortgage ought to have admonished the Court that the act of mortgage related to and was security for the performance of the conditions of a private contract affecting the entire obligation, and that not only the entire transaction did not appear in the authentic form required in the state courts, but it was apparent from the case as presented that the entire transaction and extent of the supposed mortgage did not appear in any form of evidence, authentic or otherwise.

On the motion to quash, the appellant produced in court and attached to his motion a duplicate original of the private contract referred to. The other duplicate was produced by Shattuck & Hoffman in their answer to the bill of Mrs. Corinne Fleitas in the case now being heard with this cause, printed record in No. 183, page 89, so that there can be no doubt as to its authenticity.

The following is the private agreement referred to in the mortgage.

MEMORANDUM OF AGREEMENT ATTACHED TO MOTION.

"This memorandum of agreement, made this 28th day of January, 1884, by and between the commercial firm of Shattuck & Hoffman, of New Orleans, Louisiana, of the first part, and F. B. Fleitas, of St. Bernard parish, of the second part, witnesseth:

"1. Said Shattuck & Hoffman will, as agents for said Fleitas, undertake to negotiate for said Fleitas a loan of sixty-three thousand dollars, payable one-fifth annually on the first day of Janu-

ary (fixed), 1885, 1886, 1887, 1888, 1889, respectively, with interest at eight per cent. per annum, from date of loan, [illegible] as it accrues, said interest to be represented and evidenced by coupons or interest notes. Said loan is to be secured by a first mortgage on the Corinne and Myrtle Grove plantations of said Fleitas, in St. Bernard parish, Louisiana.

"2. In consideration of the premises, said Fleitas will allow and pay to said Shattuck & Hoffman an amount equal to [illegible] and one-half per centum (2½%) of said sum of $[illegible] as commissioners; and that he moreover obligates himself to said Shattuck & Hoffman, their assigns and successors, to ship all the crop of sugar and molasses grown or controlled by him during the continuance of said loan and mortgage, for sale by said Shattuck & Hoffman on arrival, at their option, for account of said Fleitas, and that his said shipments shall be such that the gross proceeds of the sale thereof shall in no year be less than $80,000. For the handling of said sugar and molasses, the sale thereof, said Fleitas will allow and pay to said Shattuck & Hoffman a commission of two and one-half per cent. on sales and all the ordinary and usual charges incident to such business, as established by the customs of merchants in New Orleans; and should said shipments not reach in any one year the amount hereinbefore mentioned, said Fleitas will, nevertheless, allow and pay to said Shattuck & Hoffman the same amount of commission as if said shipments had, in fact, reached the amount hereinbefore provided for.

"3. Said Fleitas is at liberty to make a bona fide sale of said plantation or either of them at any time after the 1st day of January, 1886, provided said sale is made after thirty days' notice to said Shattuck & Hoffman, and thus take up and pay off so much of said loan as may be then unpaid; but such payment is only to be made in the months of December, January or February, and until such payment is made in full said mortgage shall remain in full force and effect and unimpaired by anything herein contained.

"4. Notwithstanding said sale may be made or said debt be paid, said Fleitas will nevertheless ship to said Shattuck & Hoffmann all the said crops grown on said plantations in the season next preceding the date of said payment, and said shipments shall not be less than the amount of $80,000, as herein before mentioned.

"5. It is estimated that said Fleitas will need of said loan the sum of $25,000 to pay his indebtedness to Lehman, Abraham & Co., and the further sum of $12,000 to pay off the holders of certain mortgages and lien notes. The balance of the net proceeds of said loan, say, $24,450, will remain in the hands of said Shattuck & Hoffman, to be drawn against by said Fleitas in monthly installments, of say, $3500 on the first day of each month, from

January to July, 1884, inclusive. In addition to this sum of $3500 to be drawn on the first or other day in said months, he may, if he shall so deem it, in any one of said months, draw the sum of $500, but in such case said $500 is to be deducted from the $3500 to be drawn in the next succeeding month. So long as said balance of $24,450 shall remain in the hands of Shattuck & Hoffman, they will allow said Fleitas interest thereon at five per cent. per annum, but as each installment thereof is drawn by said Fleitas interest on the amount so drawn shall cease.

"6. Said Fleitas will, for the benefit of the mortgagee of said mortgage, take out such policies of insurance as may be approved by said mortgagee, to the amount of $25,000, on his sugar house, assign them to said mortgagee as may be required, and will keep them alive.

"7. Said Shattuck & Hoffman will, in accordance with the custom of the merchants of New Orleans, effect insurance upon said sugar and molasses in transit from said plantations to New Orleans, and while in warehouse in said city.

"8. Said Fleitas will furnish abstract of title to said plantations as may be required by said Shattuck & Hoffman, at his own expense.

"9. In the event of an overflow from the Mississippi river, sufficient to imperil or threaten or actually destroy the crops of 1889 on said plantations, or either of them, to a material extent, the monthly instalment of $3.500 each, provided in article fifth hereof, will not be drawn for by said Fleitas or paid by said Shattuck & Hoffman.

(Signed): SHATTUCK & HOFFMAN,
F. B. FLEITAS."

This private agreement is on its face a bloodless scheme of usury and oppression, and evidently was not made public for that reason. It bears even date with the mortgage and notes. Giving notes to Richardson, a stranger, was part of the scheme to cover usury percentage and brokerage in every direction 2½ per cent. for procuring the loan, the money to remain in the hands of Shattuck & Hoffman with 2½ per cent. commission for disbursing for Fleitas' forced consignment of crops, 2½ per cent. commissions for sale of all sugar and molasses consigned, the 2½ per cent. to be charged up on $80,000, whether crop was produced or not. The money not disbursed to pay Lehman, Abraham & Co., and other debts of Fleitas, to the extent of $12,000, to remain in the hands of Shattuck & Hoffman, to be drawn only in stated in-

stallments per month, and in the event of an overflow by the Mississippi river sufficient to *imperil* or *threaten* or *actually to destroy* the crops of 1884 on said plantations, or either of them, *to a material extent*, no portion of the money pretended to be loaned by Richardson was to be paid in the monthly installments provided for out of the balance of the money pretended to have been the proceeds of the notes of Fleitas on deposit with Shattuck & Hoffman.

The most remote relation Shattuck & Hoffman can claim to both Fleitas or Richardson is that of mutual agent of both, if Richardson is not a figurehead without interest.

Under all the agreements as they existed there never was a moment of time when in this scheme to get a mortgage to secure future advances it was possible to determine the indebtedness of Fleitas without consulting the books and accounts of Shattuck & Hoffman, not open to the Circuit Court or indisputable as "authentic evidence," made indisputable by statute as the basis of *ex parte* procedure by executory proceedings.

ASSIGNMENT OF ERRORS.

1. The Circuit Court was, and is without jurisdiction to entertain proceedings or issue and allow final process against the property of any person without having first acquired jurisdiction over the defendant in execution, by some form of process known to the federal courts, giving the owner or possessor of the property assailed his day in court.

2. If the Circuit Court can condemn and sell property without having first acquired jurisdiction *in personam* of the owner, under any circumstances that court was wholly and utterly without jurisdiction to award final process in this cause upon the petition or bill of complaint, documents and showing presented to the court in this cause, there being no authentic proof of material matters required by the law of Louisiana, to

be established by authentic proof before final process or executory process can issue.

3. Congress having never authorized the adoption by or use in the federal courts of state process and procedure in cases in equity, the Circuit Court was without authority to disregard the forms and procedure in the foreclosure of mortgages ordained by federal law, the rules of this court, or practice and procedure lawfully adopted from English procedure in such cases existing at the time of the adoption of the federal constitution, or to pursue any procedure in an equity cause, cutting off or materially modifying the defenses or opportunity for defense granted defendants or mortgagors in equity.

4. The Court erred in allowing any process final in character against the property of the appellant on the complaint and showing in the bill and exhibits until there was a due and regular accounting of the actual amount due, such accounting being made after lawful citation of the appellant to appear in court in such accounting.

5. The Court erred in not refusing the prayer of the complainant and in making any order or decree against the property of the appellant by reason of the showing and pleadings of the appellee or any other matter in the record.

QUESTIONS OF LAW.

The Circuit Court was without jurisdiction, either in law or equity, in any cause or litigation where the parties were a natural person, or a corporation, as plaintiff, and a thing as defendant, the owner of the thing not being cited or given his day in court before final decree. That an order of seizure and sale is a final decree is no longer open to discussion.

At the date of the final decree appealed from, and of the institution of the proceeding resulting in the decree, the 28th of June, 1888, the Circuit Court depended, for any jurisdiction in civil causes where the United States was not a plaintiff, upon the

Judiciary Act of March 3, 1887, 24 Stat., 552. As [illegible] stood prior to its being amended and re-enacted, August 13, [illegible]. The act gave the Circuit Court jurisdiction in civil causes between corporations and individuals, only when the matter in dispute, exclusive of interest and costs, exceeded two thousand dollars, "arising under the Constitution, or laws of the United States, or treaties made, or which shall be made under their authority, or in which *controversary* the United States are plaintiffs, or petitioners, or in which there shall be a *controversary* between citizens of different States, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid; or a *controversary* between citizens, of the same State, claiming lands under grants of different States; or a *controversary* between citizens of a State and foreign States, citizens, or subjects in which the matter in dispute exceeds, exclusive of interest and cost, the value aforesaid * * * * * * * * *

The same section also enacts that "no civil suit shall be brought before either of said courts, by any original process of proceeding, in any other district than that of which he is an inhabitant."

The Federal Constitution limits the jurisdiction of Federal courts between citizens in controversies; "between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects."

There is no provision, either in the Act of 1887, or in the Federal Constitution, for jurisdiction in a controversy between a citizen or an individual, natural or artificial, and *a thing*, where the *thing* alone is brought into court and made to stand as defendant, whatever may be the citizenship or residence of its supposed owner.

Congress is not bound to enlarge the jurisdiction of the Federal courts, even to every subject, or in every form the Constitution may warrant, and the Act of 1887 made no attempt to confer jurisdiction *in rem* where the United States was not a party plaintiff, either in foreign attatchment or any other form of proceedure. *Turner vs. N. A. Bank*, 4 Dal. 10; *McIntire vs. Wood*, 7 Cranch 506; *Kendall vs. The United States*, 12 Pet. 616; *Cary*

vs. Curtis, 3 How. 245; *Sheldon vs. Sill*, 8 How. 449; *United States vs. Haynes*, 29 Federal Reporter 691.

It seems to be settled law that, under the Practice Act of 1872, and all the acts of Congress conferring jurisdiction on the Circuit Court, or modifying that jurisdiction up to and including the Act of 1887, in force at the time this suit was instituted, the Circuit Court cannot acquire jurisdiction by any process directed against the property of the defendant not associated with citation or process *in personam* against the defendant, and that the jurisdiction depends upon, and is contingent upon, the service of the process *in personam*. *Toland vs. Sprague*, 12 Pet. 300; *Chaffee vs. Hayward et al.*, 2 How. 208; *Chittenden vs. Garden*, 2 Woods, 437; *Sadler vs. Hudson*, 2 Curt. 6; *Nazaro vs. Cragin*, 3 Dill. 474; *Ex parte Railway Co.*, 103 U. S. 794.

The case at bar is a case of final decree against the property of the defendant, as the just and sole act of the Court — a case where the Court exhausted its entire power to act in writing up a final decree at the moment the bill was filed.

A decree in equity is final when it finally decides and disposes of the whole merits of the cause and reserves *no further questions or directions for the future judgment of the court*, so that it will not be necessary to bring the cause before the court for its final decision.

Bebee vs. Russell, 19 How. 283, affirmed in *Farrely vs. Woodfolk*, 19 How. 288; *Thompson vs. Dean*, 7 Wall. 342; *Railroad Company vs. Bradley*, 7 Wall. 575.

The order of seizure and sale, called "executory process," under the law in Louisiana, is a decree in equity, final and appealable. *Marin vs. Lally*, 17 Wall. 14.

The decree appealed from, both in form and in effect (if it has any effect), is a final decree, that the property described in the bill, and effected by the decree, be seized and sold by the marshal, and the proceeds handed over to Richardson, without

any further action or decision by the court. The notice issued by the clerk (Rec. 12), is not a notice, even to come in and hear decree, but a demand on Fleitas to comply with the demand of final decree and process issued to enforce that decree. It is, hence the less, final decree, in form and intended effect, because by its citation, nor because the owner of the property decreed against never was given a day in court.

The decree if not appealed from would have gone on to accomplish the sale of the property seized without any further action of the court.

It is idle to attempt to impeach the finality of the decree because Fleitas, the mortgagor of the property condemned, might have brought an action against Richardson, or the marshal, to impeach the decree after it had been rendered and the marshal held the writ by which the decree was to be enforced. The mortgagor of the land was not compelled to sue either the Richardson or the marshal, nor come into court, in any form, unless he elected to do so. Believing the court to have usurped jurisdiction, he refused to come into court. At what point of time would the decree for the sale of the property become final, if it was not final at the moment of its rendition? The pretense that a decree, accompanied with process, that if executed, will sweep away the entire possession and title of the mortgagor in the mortgaged premises by the act of the executive officer of the court, in the ministerial act of levy and sale, without any reference back to the court, even for direction, is not final process on a final decree, is too idle to merit attention, even if had not been settled in *Morris vs. Lally*, 17 Wall. 14.

The Supreme Court of Louisiana has never questioned the character of an *ex parte* order of seizure and sale.

In *Meaux vs. Pittman*, 32 An. 405, an attempt was made to transfer to the federal court a cause where "executory process" had issued *ex parte*, as in this case the plaintiff appealed from the order of removal, and assigned for error that the application

came too late, as the order for "executory process" was a final judgment. The court, considering this form of procedure, held that the petition came too late, determining that "*there can be no doubt that the decree for the issuance of the executory process was a final judgment, exhausting the power of the court quoad the application and leaving nothing to be decided and no contest or issue between the parties,*" citing 2 An. 491; 3 An. 253; 13 An. 256.

Again, in *Ralston vs. British and American Mortgage Company*, 37 An. 193, the same question came before the court in the same form. The court affirmed *Meaux vs. Pittman*, and held the decree for issuance of "executory process" to be a "final judgment, exhausting the powers of the court *quoad* the application."

Although a final decree as to the thing mortgaged, the decree is not a decree against the absent debtor fixing any money judgment upon which *fi. fa.* can issue for any balance not realized from the sale of the property mortgaged. The Code of Practice defines the character and qualities an instrument must possess to authorize *executory process.*

"Art. 733. An act is said to import a confession of judgment, *in matters of privilege and mortgage*, when it is passed before a notary public, or other officer fulfilling the same functions, in the presence of two witnesses, and the debtor has *declared or acknowledged* the debt for which he gives the privilege."

The debtor is not called on to confess judgment for the debt, but *to declare and acknowledge the debt.* The imported confession is only "*in matters of privilege and mortgage.*" That is, he is held to have confessed judgment that the particular property mortgaged *is mortgaged* to secure the payment of a debt which he simply *acknwledges or declares was his debt at the time of the execution of the mortgage.* The debt is not pretended to be in judgment. A simple unsecured debt may be acknowledged before a notary and a thousand witnessess, yet no summary process can be resorted to for the collection of the debt from the general property of the debtor.

It is by reason of this limitation of the alleged confession of judgment to the confession *that the lien, privilige or mortgage bears on the property described*, that the Supreme Court of the State, in

Mitchell vs. Logan, 34 An. 1003, determined that it did not adjudge anything against the owner of the property, but acted on the property only to the extent to which it was confessed liable to pay the debt, and excused citation against the debtor; his property is in court; he is not even invited to be present.

We respectfully submit that the Circuit Courts of the United States are without jurisdiction to use the so-called executory method of foreclosure of mortgages, either under the judiciary act or under any State procedure they can lawfully adopt.

The question is of great interest to the bar and courts in Louisiana. The majority of the profession do not believe the federal courts have jurisdiction of the proceeding.

The question has been involved in a considerable number of causes brought up on appeal, but disposed of before hearing in this Court of Appeals, by compromise too favorable for rejection. It is believed that only one single case of an appeal directly from the *ex parte* decree in executory process ever came to hearing in this Court. The case referred to is *The New Orleans, Opelousas and Great Western Railroad Company vs. Charles Morgan*, that came to this court about 1869, on review from decree awarding "executory process." It appears by the record in the Circuit Court, that there was a writ of error returnable to the December term, 1869. The mandate came back on June 21st, 1871. It is understood that the error relied on to reverse that case was want of jurisdiction in the Circuit Court to issue the process. This Court divided, and thereby affirmed the decree, leaving the question of jurisdiction of the Circuit Court resting on the frail basis of a divided court—at least, it is so understood by the profession in Louisiana. There is, necessarily, no report of the case. This Court will hardly consider an assignment of error frivolous when the last action of the court was to divide in opinion upon the question involved.

It is not within the power of the Federal Circuit Courts to proceed in equity causes in disregard or violation of federal statutes, and the

rules of procedure prescribed by this Court, or without having acquired jurisdiction over the persons whose rights or property are sought to be affected. "The general, if not universal equity jurisdiction, is exercised *in personam*, and not *in rem*, and depends upon the control of the court over the parties by reason of their presence, or residence, and not upon the place where the land lies in regard to which relief is sought.

Hurt vs. Sansum, 110 U. S. 151, 154.

Equity jurisdiction in federal courts depends exclusively on the Constitution and laws of the United States, and is not affected by State legislation.

Cary vs. Curtis, 3 How. 237; *Sheldon vs. Sill*, 8 How. 441; *Scott vs. Sanford*, 19 How. 393; *United States vs. Howland*, 4 Wheat. 108; *Livingston vs. Story*, 9 Pet. 632, 655; *Green vs. Creighton*, 23 How. 90; *Bein vs. Heath*, 12 How. 108.

In *Gaines vs. Relf*, 15 Pet. 9, it was set up that the federal statute adopted May 26, 1824, had conferred on federal courts in Louisiana authority to disregard regular procedure in equity and resort to the practice of the State courts. This Court, on appeal, declared that federal courts in Louisiana "are bound to proceed in equity causes according to the principles, rules and usages that belong to courts of equity, as contradistinguished from courts at common law," affirming *Livingston vs. Story*, *Ex parte Poulteny vs. City of Lafayette*, 13 Pet. 474, and *Ex parte Myra Clark Whitney*, 13 Pet. 404, and condemned the effort to exclude regular procedure from the federal courts in Louisiana, stating: "Nor can it be denied that the proceeding indicates the settled determination not to suffer chancery practice to prevail in the Circuit Court in Louisiana, in equity causes, in total disregard of the repeated decisions of this Court and the rules of practice established by the Supreme Court, to be observed in chancery cases."

If it can be found that the Circuit Court had jurisdiction to send out executory process or allow orders of seizure and sale under any circumstances, it was without authority to use the process in the case at bar for want of indispensable authentic proof submitted with complainant's application.

The State courts of Louisiana can only act in the issue of this process upon complete authentic proof of every fact necessary to foreclosure.

1. That there is a fixed acknowledged debt.

2. That there has been confession of judgment that the property to be seized is subject to mortgage and privilege to secure the payment of the particular acknowledged indebtedness.

3. That the party applying for the order is the owner of the acknowledged indebtedness.

4. That the debt is due and payable, and that there has been demand for payment and default or default, where by the terms of the act, demand is not necessary.

What is deemed authentic proof, made imperative in executory proceedings, is defined by statute. C. C. 2234.

"*The authentic act*, as relates to contracts, is that which has been executed before a notary public or other officer authorized to execute such functions, in presence of two witnesses, free, male and aged at least of fourteen years, or of three witnesses, if the party be blind. If the party does not know how to sign, the notary must cause him to affix his mark to the instrument.

"All proces verbal of sales of succession property signed by the sheriff or other person making the same, by the purchaser and two witnesses, are authentic acts."

C. C. 2236. "The authentic act is full proof of the agreement contained in it, against the contracting parties and their heirs or assigns, unless it be declared and proved a forgery."

In order to warrant executory process, proof must not only be *authentic proof*, but must "import confession of judgment in matters of privilege and mortgage." This is required by article 733, Code of Practice.

"Art. 733. An act is said to import a confession of judgment, in matters of privilege and mortgage, when it is passed before a notary public, or other officer, fulfilling the same functions, in the presence of two witnesses, and the debtor has declared or acknowledged the debt for which he gives the privilege or mortgage."

"To justify the order of seizure and sale, every muniment of title and every link of evidence must be in authentic form. In such proceeding the judge can entertain no matter *in pais*."

Miller, Lyons & Co. vs. Cappel et al., 36 An. 264; Van Ralte vs. Congregation of the Mission, 39 An. 617; Ray vs. Henry, 10 Martin, 222; French vs. Mechanics' and Traders' Bank, 4 An. 153; Commercial Bank vs. Poland, 6 An. 477; Tufts vs. Beard, 9 An. 310; Ricks vs. Bernstein, 19 An. 141; Burns vs. Naughton, 24 An. 476; Wood et al. vs. Wood, 32 An. 801; Chaffee, Syndic, vs. Carroll, 34 An. 122; Chaffee, Syndic vs. Carroll, 35 An. 115.

The rule *strictissimi juris* has always been applied to executory process; a plaintiff who applies for the administration of justice in an extraordinary and summary mode must bring himself completely within the rules which authorize such a proceeding. *Gilly vs. Lee*, 1 N. S. 237. In this case the Court refused executory process to enforce the rights of the sureties on the bond of a federal officer, the sureties having paid the judgment debt of their principal, and under the law of Louisiana were subrogated by statute to the rights of the judgment creditor. The process was refused because there was no authentic proof of subrogation, although it followed payment by operation of the law. The authorities on this subject are collated in the case of *Miller, Lyons & Co. vs. Cappel and others*, 36 An. 264, where the doctrine is again reiterated. It is the settled law of Louisiana.

The copy of the mortgage and bill presented to the Court, and upon which the decree in this cause is made, so far as the debt is concerned, show nothing but matter *in pais*, upon which there was not only no authentic evidence, but no evidence of any character attempted or presented to the Court. The contract under private signature of January 28th, 1884, the existence of which was disclosed in the act of mortgage, was not presented to the Court nor referred to in the bill.

The mortgage presented to the Court disclosed a triangular contract between *Fleitas, Shattuck & Hoffmann* and *Richardson*, if Richardson is not, in fact, a mere tool of Shattuck & Hoffman, interposed to help out a scheme of usury.

The bill avers that "said *Shattuck & Hoffman*, a commercial

firm named in said act of mortgage, have no interest in said estate, and your orator is *informed and believes* that they have no interest in said act of mortgage. Your orator has given them notice of this proceeding." An allegation that, so far from being authentic proof, is not averred as a substantive fact, excepting upon *information and belief*, and in a bill for foreclosure, would have been traversible, to be sustained by proof in all things as matter *in pais*.

If the act of mortgage alone is consulted, the character of the transaction is not doubtful. Shattuck & Hoffman can claim no other position than parties in interest being apparently, if not principals in the transaction, the agent of both parties, owing duties both to Richardson and Fleitas, and having also an individual and distinct interest in the contract under private signature, referred to "*as said articles of agreement executed the 26th day of January, A. D., 1884, by and between said appearer and Messrs. Shattuck & Hoffman.*" The mortgage being given, so far as they are concerned, apparently to secure the performance of an executory private agreement to consign the entire produce of the two plantations to *Shattuck & Hoffman* for advances by *Shattuck & Hoffman*, for charges for storage, insurance, etc., with a provision that the indebtedness or the amount advanced by Fleitas or Shattuck & Hoffman shall in no event exceed in the aggregate an amount equal to the indebtedness of Gilbert M. Richardson.

The scheme is transparent; if *Gilbert M. Richardson* and *Shattuck & Hoffman* are not the same in fact, and Shattuck & Hoffman, the real parties making the alleged loan, then it is clear that Shattuck & Hoffman were to hold the notes made to Richardson for discount, retaining the proceeds themselves, and charging commission for advancing to Fleitas the money realized on the notes.

The mortgage contains other covenants, pawning crops for the money advanced by the "said mortgagees." Stipulations that Shattuck & Hoffman have the right "to apply any proceeds of the sale of all sugar and molasses shipped them, and all payments made to them, in any one season, to the payment of any indebtedness that may now or hereafter become due to Shattuck & Hoff-

man by said appearer upon open account, or to the debts secured and intended to be secured by this act, which may be due or become due in that season, or the payment of any demands of said appearer, according to their view of the exigencies of the case. Said application may be made at such time and in such manner as they may elect, and that no application of such proceeds of sale or money to the payment of any debt in open account which may at any time be due to the said Shattuck & Hoffman by the said appearer, or to any other account, shall impair, lessen, or prejudice the other debts secured and intended to be secured by this act, or the security herein and hereby provided therefor."

The memorandum of agreement of the 28th of January, 1884, referred to in the mortgage and furnished the Court on the motion to quash the order of executory proces, discloses the scheme of the mortgage to be a plan by which *Shattuck & Hoffman* were to discount the notes of Fleitas, hold the money, and charge him percentage for advancing the money realized on the notes.

Provision is made for interest back to Fleitas on any balance of the proceeds of the notes not drawn by Fleitas while a balance remains in the hands of *Shattuck & Hoffman*, containing an extraordinary provision putting it in the power of Shattuck & Hoffman, under certain contingencies, to refuse to allow Fleitas to have the balance of the proceeds in their hands. "9th. In the event of an overflow of the Mississippi river, sufficient to imperil or threaten or actually to destroy the crops of 1884 on said plantations, or either of them, to a material extent, the monthly installment of $3,500 each, provided for in article fifth hereof, shall not be drawn for by said Fleitas or paid by said Shattuck & Hoffman."

The authenticity of this memorandum of January 28, 1884, was not only never denied, but a duplicate original thereof was produced by *Shattuck & Hoffman*, and made an exhibit to their answer to the bill of the wife of Fleitas in the case consolidated with this cause for hearing.

The mortgage was not only not severable so as to consign one part of the mortgage to *Gilbert M. Richardson* and another share to *Shattuck & Hoffman*, but on the face of the recitals in the mortgage,

and particularly of the recitals attempting to set out the terms of the contract under private signature of January 26th, 1854, the total amount due on the mortgage, at any one period after the the consignment of crops commenced could not be determined without a resort to the books of *Shattuck & Hoffman*, to determine not only to what extent the indebtedness had been reduced by the proceeds of the sale of crops, but to what extent there had been imputation of payments, under the authority given to *Shattuck & Hoffman*, to the open accounts of *Shattuck & Hoffman*, or to the notes claimed to be due to Richardson. No equity court, proceeding with ordinary care, would have ever rendered a decree fixing the amount secured by the mortgage until after there had been rigid and careful accounting before a master.

If the act of mortgage can be claimed as "authentic proof" of the fact that a mortgage was given, without authentic proof of the procuration or power of attorney from Richardson to Mellen, it is authentic proof of the fact that the amount that the mortgage was intended to secure became unliquidated from the moment the forced consignment of crops of the mortgaged plantations commenced. The fact that all but two of the notes are alleged to have been retired was sufficient to put the Circuit Court on notice that the triangular contract referred to and sought to be secured by the mortgage, had been at least partially executed, or executed to the extent of making the relation between the parties dependent upon the liquidation of an account, only to be ascertained by an examination of the commercial books of *Shattuck & Hoffman*, or *Fleitas*, or the books of both parties in the case of dispute.

We respectfully submit that if the Circuit Court had jurisdiction to issue this process, in any case, it could only act under the same conditions that would have permitted a State court to have made the order or decree, awarding executory process, and that the decree of the Circuit Court should be annulled and the proceeding dismissed.

We annex hereto as appendix a reference to the authorities, including, as we believe, all the cases of any importance in which the Supreme Court of this State have passed upon questions relating to executory proceedings involved in this contention.

Respectfully submitted,

J. R. BECKWITH,

Counsel for Appellant.

Authorities on subject of Executory Process.

Formalities must be strictly observed, the proceeding being one of great severity.

Spencer vs. Knowland, 2 An. 222.
Chambers vs. Atchinson, Ibid. 488.
Robb vs. Potts, Ibid. 553.
Landry vs. Leglise, 3 La. 220.
Maillard vs. Perron, 8 La. 138.
Armstrong vs. Levy, 14 La. 157.
Bushnell vs. Brown, 4 Martin, N. S. [illegible].
Communy vs. Archinard, 1 An. 279.
Livingston vs. Dick, 1 An. 323.
French vs. Bank, 4 An. 12, 152.
Yates vs. Phipps, 5 An. 124.
Wright vs. Russell, 5 An. 126.
Ricks vs. Bernstein, 19 An. 141.
Hoffman vs. Steid, 22 An. 267.
Calhoun vs. Bank, 30 An. 772.
Landry vs. Landry, 12 An. 167.
De Breres vs. Freret, 18 An. 80.
Bank vs. Poland, 6 An. 477.
Chaffe vs. Carroll, 34 An. 122.
Lyon vs. Cappell, 36 An. 264.
Long vs. Ervine, 6 Rob. 192.
Gilly vs. Lee, 1 Martin, N. S. 237.

The process cannot be used to enforce mortgage note given to secure advances and supplies where, in order to fix amount due, commercial books must be consulted.

Ward vs. Douglass, 22 An. 463.
Succession of Guelleman, 2 An. 779.
Toledano vs Gardiner, 9 An. 116.
White & Co. vs. Bucker, 9 An. 114.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM NO. 483; RECORD CASE NO. 13,729.

MRS. MARY CORINNE WARREN FLEITAS, APPELLANT,

versus

GILBERT M. RICHARDSON, ALBERT E. SHATTUCK, FRANK HOFFMAN, ET AL.

Appeal from the Circuit Court for the Eastern District of Louisiana.

APPELLANT'S BRIEF.

This cause, for the purposes of hearing, has been consolidated with the case of Francis B. Fleitas vs. Gilbert M. Richardson, No. 299 of the docket of the present term, and relates to the same property and plantations sought to be subjected to mortgage foreclosure in that case. The suit was instituted in the Civil District Court for the parish of Orleans, on April 18th, 1888, by Mrs. Mary Corinne Warren Fleitas, wife of Francis B. Fleitas, the appellant, in number 299, against William F. Mellen, Gilbert M. Richardson, Albert E. Shattuck, Frank F. Hoffman, individually and as co-partners in the firm of Shattuck & Hoffman, and the British American Mortgage Company, Limited, and is in the nature of a bill of peace or *qui timet*. The petition avers that Mrs. Mary Corinne Warren Fleitas is the wife of Francis B. Fleitas, and duly authorized under the laws of Louisiana, by her said husband, to institute this action. She resides with her husband in the parish of St. Bernard, in the State of Louisiana. That on February 6,

1868, she was married to her present husband, Francis B. Fleitas. That on the day of her marriage, and before the celebration thereof, her parents, John Ira Warren and her mother, made her a donation of twenty thousand dollars in money. That before her marriage, and in the pursuance of the contract of marriage entered into with her contemplated husband, the sum was placed in the hands of or handed over to Francis B. Fleitas, as her paraphernal property and by him detained, held and administered as her paraphernal property, until a final judgment of separation of acquets and gains was rendered in her favor and against her husband, as set out in the petition, a copy of the record and the judgment being made a part of the petition.

That on February 6, 1868, and before her marriage, she and Francis B. Fleitas entered into a marriage contract, or an act passed before one Selim Wagner, a notary public in the city of New Orleans, a copy of the act or marriage contract being made an exhibit to the petition to be found on page 15 of the printed record. This contract, after a formal description of the parties appearing before the notary, recites that Francis B. Fleitas, party of the first part, and Mary Corinne Warren, being the maiden name of the plaintiff, party of the second part, mutually declared that in contemplation of the intended marriage which they bound each to the other to solemnize whenever thereunto required, had entered into a matrimonial agreement, providing that all debts contracted previous to the marriage should be borne and paid by the party contracting the debts, and that neither of the parties or their property should be held liable for the debts that the other had contracted before marriage.

That there should be a community of acquets and gains, the community to be governed and regulated by the provisions of the law of Louisiana, even in case of removal to another State. It was agreed that the intended wife brought into marriage as her paraphernal property all the furniture, clothing and jewelry belonging to her, the value of which was fixed at $4000, to which

valuation F. B. Fleitas bound himself and agreed to remain charged and accountable to his future wife for that estimated value. That John Ira Warren and Mrs. Mary M. A. Bayhem, his wife, duly authorized by her husband, declared to the notary that in consideration of the intended marriage of their child with Fleitas and the love and affection they bore for their daughter, and only child, they made to her, by donation *inter vivos*, gratuitous and irrevocable and in the most solemn manner that donations can be made, the sum of $20,000, current funds of the United States. That the donation was accepted by Mary Corinne Warren, their daughter, and that the money was handed and delivered to their daughter, the intended wife, in the presence of the notary and the subscribing witnesses, receipt of which the future bride acknowledged. That upon receipt of the same she, in the presence of the notary and witnesses, handed over and counted the said sum of $20,000 to her future husband, F. B. Fleitas, who acknowledged to have received the same and declared that he had taken charge of the said amount for the account of his future wife and held himself bound and responsible to her according to law.

It was further agreed that the property which the future wife then owned, or any other that she might thereafter acquire with the funds belonging to her, should remain her paraphernal property.

The marriage agreement was executed in all things in compliance with the forms prescribed by the law of Louisiana, and the contract was recorded in the parish of St. Bernard, in the proper books of record, on the 27th day of September, 1870, and had the effect to give the complainant a legal mortgage upon all the immovable property of her husband, Francis B. Fleitas, and all that he might afterwards acquire during the marriage.

That since 1870 complainant and her husband have resided in the parish of St. Bernard, and that by operation of the law of Louisiana, her marriage contract and its recordation gave her a mortgage and privilege on all the assets of her husband, to secure

the return to her of the twenty thousand dollars, the paraphernal property given to her in the contract. That subsequent to the time of the domicile of complainant and her husband in the parish of St. Bernard, her husband acquired real estate and lands in the parish of St. Bernard, one plantation being known as the Myrtle Grove plantation, and another plantation known as the Corinne plantation, being the same property involved in the case of Francis B. Fleitas against Richardson, consolidated with this cause.

That her mortgage, under the law of Louisiana, attached to this property.

That after F. B. Fleitas had acquired said property, he executed a mortgage on the Corinne plantation, to secure his mother the payment of the sum of money due her, and that in order to secure to the mother of her husband this sum of money, she appeared and joined in the notarial act of mortgage to Mary B. Fleitas, her husband's mother, and waived the rank of her legal mortgage on the Corinne plantation; but that waiver was expressly limited to and affected the said mortgage executed to the mother of her husband.

That being unable to pay the mortgage in favor of his mother when the same became due, the mother proceeded to foreclose the mortgage by proper proceedings in the District Court in Louisiana having jurisdiction in the parish of St. Bernard. That there was judgment and decree of foreclosure and the property sold at judicial sale to satisfy the mortgage. That, at that sale, Mary B. Fleitas, the mother of complainant's husband, bought in the property in satisfaction of her mortgage, being the highest bidder, and the sheriff made title to Mary B. Fleitas, divesting complainant's husband of his title thereto; but that afterwards, and prior to the year 1884, complainant's husband, F. B. Fleitas, again purchased all of the property back from his mother, Mary B. Fleitas, by an act of conveyance in due form, vesting thereby the full legal title to Corinne plantation in her husband, F. B. Fleitas, and reinvested him again with title subject to the effect and opera-

tion of the legal mortgage resulting from the nuptial contract and the dispossession of her paraphernal property, being the ranking lien or privilege on the property.

That in 1882, her husband, by purchase and due conveyance, acquired full title to the Myrtle Grove plantation, and that property also became subject to the legal mortgage of complainant.

That up to the 31st of September complainant had never demanded from him the return of her paraphernal property, the twenty thousand dollars named in the contract of marriage, but the same remained in the hands of her husband, under his administration, up to that date. That her husband having become involved, and his affairs in confusion, and there being danger that his assets would not be sufficient to meet the payment of the twenty thousand dollars as authorized under the laws of Louisiana, and in order to protect herself in her rights, she instituted an action in the District Court for the parish of St. Bernard against her husband, to obtain a decree dissolving the community of acquets and gains, and to obtain a separation of property and the restoration of the management and control of her paraphernal property, as authorized by law. That the proceedings were all in due form and contradictory with her husband, and that on the 10th day of September, 1887, judgment was rendered in the case in favor of complainant and against her husband, ordering the dissolution of the community of acquets and gains, and decreeing a separation of property, adjudging and decreeing that the complainant recover from her husband judgment for the full amount of twenty thousand dollars, the amount of her paraphernal property received by him as stated in the contract of marriage, and that the same be recognized, and that she be secured by the legal mortgage, according to law, on all of the real estate of her husband situated in the parish of St. Bernard, and that the legal mortgage resulting from the recording of the marriage contract should have effect from the 27th of September, 1870.

That execution was issued on the judgment and the Myrtle

Grove and Corinne plantations seized by the sheriff, offered at public sale in accordance with the law of Louisiana relating to sales under execution, and that on the 19th of November, 1887, at judicial sale, she purchased the property for the sum of twenty thousand dollars, the amount of her claim, less costs, and took the sheriff's deed in her name, whereby the property became her own separate property, the title of her husband being divested. That the sheriff's deed was recorded in the proper book of record in the parish of St. Bernard, on the 23d of November, 1887, the sheriff's deed, with its endorsements, being made a part of her petition.

That on the 28th day of January, 1884, long after her legal mortgage had attached to and become a lien on all of the immovable property of her husband, Francis B. Fleitas, her husband, entered into a notarial act of mortgage before one Ory, a notary public in and for the parish of Orleans, wherein he acknowledged himself indebted to one Gilbert M. Richardson, an alleged citizen of the city and State of New York, in the sum of sixty-three thousand dollars, evidenced by five promissory notes, due respectively on the first day of January, 1886, 1887, 1888 and 1889, with eight per cent. interest, represented, as she is informed, by coupon notes.

That in order to secure the payment of the notes and interest her husband executed an act of mortgage, bearing on the Corinne and Myrtle Grove plantations, copy of which is annexed to the petition, being the mortgage sought to be foreclosed in case No. 299.

That since the sheriff's sale of the property to her in November, 1887, the mortgage, if it ever existed as a lien and privilege on the Myrtle Grove and Corinne plantations, ceased to exist, being extinguished by the sheriff's sale under a ranking privilege.

That in order to administer her property in said plantations it is indispensable that steps be taken to put the plantations un-

der cultivation and planting for the season of 1888, and that [illegible] should be taken at once; that she had taken steps and incurred expense in planting and for the cultivation of the property for the year 1888, and that if said defendants or any holder of the notes referred to in said mortgage made by her husband, F. B. Fleitas, were permitted to seize the property out of possession, as authorized by law, it would cause her irreparable loss and injury and defeat the cultivation of any crops during the coming season, besides subjecting her to a loss of the labor and expense already incurred in the planting and cultivation of the property for the year 1888, besides an irreparable loss of credit, by reason of the dispossession and cloud cast upon her title to the property. That she believes that the defendants, Shattuck & Hoffman, are now the holders of the alleged mortgage notes of Fleitas, holding them either as alleged owners thereof or for Gilbert M. Richardson. The other defendant, William F. Mellen, is the agent of Richardson, who is a non-resident of the State. That she is informed and believes that there is some combination or confederacy, or relation between the defendants named and the corporation called the British American Mortgage Company, Limited, and that they intend to assail her possession of the property, under a pretense that she had no title therein. That sometimes they pretend that the mortgage to Richardson and Shattuck & Hoffman ranks the mortgage or privilege resulting from the recording of the marriage contract. That sometimes they pretend that the complainant's waiver of her legal mortgage, in order to secure Mary B. Fleitas in the mortgage given his mother by her husband, which mortgage was subsequently foreclosed, was a waiver of the rank or privilege as to all subsequent hypothecations by her husband, F. B. Fleitas, and that at other times they pretend that the complainant has no right, title or interest, and has no legal mortgage on said property, because of an entry made in the records of the parish of St. Bernard, by one Philip Toca, acting at that time as recorder of the parish of St. Bernard, alleged to be made

on April 25, 1877, which entry, she is advised, was in the figures, as follows: "Erased and cancelled by virtue of a judgment rendered by the United States Circuit Court. Judge E. E. Billings. Signed April 25, 1877," said to have been endorsed upon a blank margin of the book in which complainant's marriage contract was recorded.

Complainant denies that such entry, if made by Philip Toca, was ever authorized or warranted by her, and that she had no knowledge of any such entry until after her judgment of separation, and for the return of her paraphernal property. That it was not true that there was not at that time, nor at any time, any judgment of the United States Circuit Court for the State of Louisiana, or holding any session in the State of Louisiana, relating, or effecting, or operating on her legal mortgage, or record of the marriage contract, signed either on the 25th day of April, or on any other day, and that no such judgment ever existed, or was warrant for Toca, or any one else, to make such entry, and that said entry was without authority under any law.

That, at different times, the said defendants pretend that because some time in 1887 her husband, Francis B. Fleitas, availed himself of the provisions of the federal bankruptcy act, at that time in force, and applied to the District Court of the United States, having jurisdiction in Louisiana, for the benefit of the bankruptcy act, and that after the proceedings, had some time in 1887, was handed a certificate and judgment discharging him from all obligations provable in bankruptcy, according to the provisions of the act of Congress, and that the marriage contract and the obligations of F. B. Fleitas, under that act, were discharged.

Complainant denies the proceeding in bankruptcy had any such effect, and avers that if any certificate of discharge from debts was handed or allowed Fleitas, her husband, the same has never been set up or pleaded against complainant, and that under the law of Louisiana it could not be so set up.

Complainant prayed for injunction against defendants, en-

joining them from interfering with her quiet possession and occupancy of the property, or setting up the mortgage to Richardson as a lien, privilege or encumbrance affecting her title. The State Court allowed the writ, which was issued and served.

On the 24th of January, 1888, defendants appeared and made application for removal to the Federal Court. Their application was granted and the case removed.

At the April term of the Circuit Court, the defendant, Richardson, answered by separate answer (sworn to by Mellen, under his power of attorney), denying knowledge of the marriage or marriage contract, and averring, under the oath of Mellen, that the twenty thousand dollar donation was never made or delivered to F. B. Fleitas, the husband; admitted that the complainant and her husband had lived in the parish of St. Bernard, and that the marriage contract was recorded in the mortgage book of that parish on September 27th, 1870, and that he was without knowledge whether it had been recorded, in the donation or conveyance book; averred that the marriage contract had been "long since erased from the records of the parish of St. Bernard," and denied that the complainant had any legal mortgage upon the plantations, averring that if the twenty thousand dollars had ever been placed in the hands of Fleitas, the husband, the same had been paid back to the wife; admits the acquisition of the Myrtle Grove and Corinne plantations as stated in the bill, and the mortgage from Fleitas to his mother in 1877; admits the waiver of complainant's legal mortgage in favor of her husband's mother's claim, the foreclosure of the mother's mortgage and the judicial sale of the property; admits that Fleitas, the husband, subsequently purchased the property back from his mother, and that he became vested with the title to the property prior to 1884; admits the judicial demand of the complainant for separation of property and the dissolution of the community, and that she obtained a decree with recognition of her legal mortgage on the property, from September 27, 1870, as stated in the bill, but avers, as

to him, the decree is null and void, and that the sale of the two plantations under *fi. fa.*, and the deed of the sheriff to the complainant took place, but says that they are void, because, among other things, no notice of suit or sale was given him; avers that the suit was carried on in a clandestine manner, and "in the interior of a sparsely settled country parish, remote from commerce," (the parish of St. Bernard abuts the city of New Orleans); that the publication was in a local parish paper in St. Bernard parish, having a very limited circulation; that the property sold too low and ought to have brought more money. (How this, if true, can affect the validity of the judgment on which *fi. fa.* issued is not manifest). Admits the discharge of Fleitas in bankruptcy, and that the proceeding was not pleaded by Fleitas against his wife, but that, to supply that deficiency, he, Richardson, now pleads the discharge of Fleitas in bankruptcy as a defense to the action of complainant against her husband. (This plea may be termed in one sense directory, as it is first set up and pleaded by a stranger after satisfied *fi. fa.* on final judgment). Avers that there was an erasure of the marriage contract as a legal mortgage, by a marginal entry on the record of the contract, made, as it is averred by the order of the sheriff for the parish of St. Bernard, the entry being erased, cancelled and annulled by an order of the sheriff for the parish of St. Bernard, dated this 18th of March, 1884, requesting me to deface the mortgage herein granted by F. B. Fleitas, to secure her dotal and paraphernal rights, the said order annexed for reference. Signed, Philip Toca. (How the sheriff in the interior of a sparsely settled country parish, remote from commerce, or any other kind of a parish, acquired the right to cancel and destroy marriage contracts, or order their cancellation and destruction, is not explained in the answer). There is also an incoherent reference to the loan made by the mother of Fleitas, and the waiver of the rank of complainant's mortgage in favor of the mother of Fleitas, made by the complainant, and its effect upon her title to property that was

subsequently lost by Fleitas and vested in his mother in the [illegible] foreclosure sale.

The other defendants answer by simple denial of confederacy or conspiracy.

On the coming in of the answers, the defendant, Richardson, moved for a dissolution of the injunction allowed by the State court, on the ground, among other things, that there was no equity in the bill. This motion was heard, and on June 22, 1888, the court made an order (Record, page 58), dissolving the injunction so as to allow the defendants to proceed to the foreclosure of their mortgage and the enforcement of their claim, notwithstanding the injunction, provided that in case foreclosure proceedings were instituted and led to the seizure of the plantations, or the property described in the bill, the defendants, after causing the seizure to be made, should not proceed to advertisement and sale of the property seized until the further order of the Court.

Complainant applied to the Court for leave to recast the pleadings in conformity with equity procedure. The order was allowed and the pleadings recast.

Seven days after the dissolution of the injunction, that is June 29, 1888, Richardson applied to the Court and obtained an order of seizure and sale on the property and notes of the husband, F. B. Fleitas, being the proceeding involved and set out in Case No. 299 consolidated with this cause.

F. B. Fleitas moved the Court to quash the order and process and in the alternative for an appeal. The Court at that time refused to quash and refused to allow an appeal. Richardson subsequently caused the property affected by the decree and order in the executory proceeding to be seized, but the Court, subsequently reconsidering its ruling, maintained the refusal to quash, but granted an appeal *nunc pro tunc* as of the date of the first application.

Complainant then applied to the Court for leave to amend and supplement her bill, and on June 10, 1888, under permission of

the Court, filed a supplemental bill, setting out the proceedings under executory process, and asking for relief against the process, and that they be decreed null and void. To this supplemental answer there was default at first, but the *pro confesso* default was set aside, and Richardson answered, again setting up the same matter as in his answer to the original bill.

Shattuck & Hoffman answered that all their transactions with Fleitas had been entered in the books, and that by the direction of Richardson, they had paid certain debts of Fleitas, denied usury in the accounts, and made as an exhibit to their answer a memorandum of agreement, under private signature, of the date January 28, 1884 (Record, p. 89), being the duplicate original of the agreement presented to the Court by Fleitas on his motion to quash the executory process; also another agreement of substantially the same character, of the date January 21, 1885, and another of March 31, 1886, and an alleged account, or statement of account, between Shattuck & Hoffman and F. B. Fleitas.

The other defendants answered, simply denying conspiracy or confederacy. The marshal, made party, answered that he had seized the property, by virtue of the writ of seizure and sale, and held the same in his possession by that authority.

The cause came to hearing on the pleadings in the case, and on June 12, 1889, the District Judge holding the Court made a final decree, dismissing the bill, with costs (Record, p. 181), filing a written opinion that is to be found on page 184 of the printed record.

The proofs sustain the allegations of the complainant's bill. The marriage contract, with proof of its record in the parish of St. Bernard, is to be found on page 15, in the record, and the record of the action of complainant against her husband, with the judgment and decree and proceedings subsequent to decree and sheriff's conveyance on, pages 12 et seq. of the record.

Proof of the publication of the judgment of dissolution of

community with restrictions of paraphernal property [illegible] found on page 131 of the printed Record.

In the lower court there was no dispute concerning the ante-nuptial contract; that is, the fact that it was made and that the donation of $20,000 constituted the paraphernal property of, and belonged to the wife. If it had been a matter of dispute, it is thoroughly established by the record.

It is in proof that none of the endorsements made upon the margin of the antenuptial contract by Philip Toca were ever known or authorized by the complainant, and there was no attempt made to show any such authorization, or the existence on file in the office of the recorder of the parish of St. Bernard, of an authorization to Toca to make any entry or endorsement on the Record of the antenuptial contract.

A certificate of the clerk of the Circuit Court of the United States for the Eastern District of Louisiana, having in his possession the records of that Court, attests the fact, not disputed (Record, page 131), that no suit or proceeding of the character referred to in the entry made by Toca on the margin of the record of the antenuptial contract ever existed in that Court, and that the recital of Toca of such a suit or proceeding was false.

In the petition of F. B. Fleitas to be declared a bankrupt, filed in the District Court of the United States for the District of Louisiana, April 26, 1876, together with the schedule "A," filed with the petition, are in the printed record, at pages 168 et seq.

List of creditors proving their debts will be found at pages 180 et seq.

Certificate of discharge of Francis B. Fleitas as an adjudged bankrupt will be found at page 181.

It appears by the record that at the date of the application of F. B. Fleitas to be adjudged a bankrupt, his mother had foreclosed her mortgage on his real estate, and that he was at that time in possession of no im-

movable property, and that the property involved in this litigation and claimed to be subject to Richardson's mortgage and to be affected by the legal mortgage resulting from the antenuptial contract was acquired by Fleitas after his discharge from bankruptcy.

There is no substantial controversy concerning facts, the contention being practically confined to questions of law to be determined by the construction and application of the laws of Louisiana relating to marriage and the rights of married women and the construction of the federal bankrupt act, and the determination whether that act intended to overthrow the statutes of Louisiana concerning marriage, and discharged married persons from the obligations entered into in consideration of marriage and that part of the civil contract of marriage, without dissolving the entire civil contract, so as to leave the civil contract of marriage bereft of the material consideration forming the consideration or inducement that led to the marriage, and whether that law had the effect also to repeal laws enacted in pursuance of a general policy of the State and in furtherance of public order.

Whether a discharge in bankruptcy absolutely destroys the moral obligation of the bankrupt to pay honest debts, notwithstanding the discharge was intended or its policy to furnish the bankrupt simply with an adequate legal defense against any attempt to enforce the payment of debts commercial from which he had been discharged by furnishing him with an effective plea, if he saw fit to use it.

Whether a discharged bankrupt, who has been sued for the recovery of a debt provable in bankruptcy, is compelled to plead his discharge in bankruptcy as a defense to such an action, and whether in the event that he neglects or fails to plead his discharge as a defense, any third person claiming interest as a creditor of the bankrupt can interpose against the plaintiff in such an

action the plea that the defendant had been discharged in bankruptcy and make the plea effective when pleaded, not only against final process, but after satisfaction of the judgment by the sale of the defendant's property under *fi. fa.*

ASSIGNMENT OF ERRORS.

1. The Court erred in dismissing the bill and in not decreeing the relief prayed for in the bill.

2. The Court erred in holding that the federal bankruptcy act or legislation was intended to affect or did affect the contract or relation between husband and wife as ordained by the several States, or to discharge either party from any of the obligations contained in an antenuptial contract.

3. The Court erred in giving any effect to the defendant's attempted plea of the discharge in bankruptcy of F. B. Fleitas, the husband, set up by the defendants in their own interest as a supposed defense in a suit between the complainant and her husband, F. B. Fleitas, for the separation of property and return of her paraphernal property, not pleaded by the husband in that action, nor by the defendants in this action until after final decree and judgment in the suit for separation and after the return of *fi. fa.* satisfied by the sale of property.

ARGUMENT AND AUTHORITIES.

In Louisiana, the laws relating to marriage and the relation of husband and wife, as in all other States, are regulations of internal police and policy and statutes of public order. There never was anything in Louisiana the equivalent of the common law right of dower vested in the wife, as a result of the relation of husband and wife, nor any power upon the part of the husband to get title to the separate property of the wife by reducing it to possession, or of her real property by reducing it to personal property, and obtaining possession or control of the personal estate, nor can he ever acquire the personal property of the wife by

inheritance as heir at law, or in the event of the wife's dying intestate. The law of Louisiana has always been the rule of the Roman or continental law of Europe, making the relation of husband and wife, in the absence of antenuptial contract, approximately that of partnership or community of acquets and gains, while the relationship exists, leaving to the wife full title to her separate property, owned by her either at the time of marriage, or donated, inherited or acquired by her as her separate property after marriage. This right is protected by contract obligations, implied in law or expressed in the antenuptial contracts.

The rules governing this legal partnership and the rights and liabilities of the partners are prescribed in section 1, chapter 3 of the Civil Code, verbo Legal Partnership, Art. 2400 et seq.

Art. 2325, C.C., declares that in relation to property, the law only regulates the conjugal association, in default of particular agreements, which the parties are at liberty to stipulate as they please, provided they be not contrary to good morals, and under the modifications hereafter prescribed."

Art. 2326 provides that they can not alter the legal order of descents by their antenuptial contracts.

Art. 2327 provides that there can be no derogation of the power of the husband over person of his wife or children.

Art. 2329 provides that no antenuptial contract of marriage can be changed or altered after the celebration of the marriage.

Art. 2334—" The property of married persons is divided into separate property and common property.

"Separate property is that which either party brings into the marriage or acquires during the marriage by inheritance or by donation made to him or her particularly."

" Common property is that which is acquired by the husband and wife during the marriage in any manner different from that above declared." Art. 2335. The separate property of the wife is divided into dotal and extra dotal.

"Dotal property is that which the wife brings to the hus-

bound to assist him in [illegible] establishment. Extra dotal property, otherwise called paraphernal property, is that which forms no part of the dowry."

Art. 3319. The wife has a legal mortgage on the property of her husband in the following cases:

1. For the return of her dowry and for the reinvestment of the dotal property sold by her husband and which she brought into marriage, reckoning from the celebration of the marriage.

* * *

3. For the restitution or reimbursement of her paraphernal property."

Art. 2381 of the Revised Statutes provides for the recording of the marriage contract or act from which the legal mortgage can spring in the parish where the property of the husband is situated.

C. C. Art. 86. "The law considers marriage in no other view than as a civil contract."

C. C. Art 87. "The law prescribes:

"1. The manner of contracting and celebrating marriages.

"2. The legal effects and consequences of marriage.

"3. The manner in which marriages may be dissolved.

"The husband can confer no general power of administration upon his wife, even though stipulated in the marriage contract except so far as relates to the administration of the separate property of the wife." C. C. Art. 133.

Art. 2399. "Every marriage contracted in this State superinduces of right partnership or community of acquets or gains, if there be no stipulation to the contrary."

In the case at bar, the legal mortgage springs from the marriage contract containing the admission of the delivery to the future husband of the ornaments and clothing of the proposed wife and the twenty thousand dollars in currency.

Art. 3369 declares that mortgages of this character shall continue in effect without reinscription, at intervals of ten years, as required in conventional mortgages.

The policy of the law of Louisiana is, and has always been, to protect with extreme care the separate property of the wife, to the extent of controlling even its succession and inheritance in the line of descent of the heirs of the wife, whether they be direct or collateral, to the exclusion of the husband and his

heirs, (excepting, of course, the issue of the marriage), and to prevent its absorption either by the husband or the community.

Complainant and her husband entered into the contract of marriage with this antenuptial contract as a part of the consideration. The possession or control of the twenty thousand dollars in currency by the husband being a material part of the treaty, and perhaps the controlling consideration. It might well be that, without the pecuniary advantage resulting from the use of the twenty thousand dollars, without being liable for interest, the husband might not have felt himself in a condition to have assumed and incurred the expense involved in the proposed matrimonial venture. The complainant and her parents might well have been unwilling to have entered into or allowed the alliance and contemplated marriage, if the law had not secured the paraphernal property to the wife and guaranteed protection to the issue of the marriage, or to the widow, if the wife survive; that the antenuptial contract was entered into with great deliberation is evidenced by the fact that in the contract the $20,000 was made paraphernal instead of dotal property, and protected by a stipulation that the husband should be bound by the laws of the State in respect to the share of the husband and wife in the community of acquets and gains, which was to continue even in the event they should cease to reside in the State of Louisiana, and that there should be a legal mortgage affecting the property of the wife either *in praesenti* or *in futuro*; that the policy of the laws of Louisiana has been one of extreme care in the protection of the wife and her separate property, is evidenced by the construction given to Article 1984 of the Civil Code: "Every contract shall be deemed to have been made in fraud of creditors when the obligee knew that the creditor was in insolvent circumstances, and when such contract gives to the obligee, if he be a creditor, any advantage over other creditors of the obligor." The Courts have uniformly held under this article that a transfer by an insolvent husband to his wife, in satisfaction of her claim for the restitution

of her separate property, is not [illegible] or subject to the revocatory action.

Lehman, Abraham & Co. vs. Levy, 37 An. 745.

Levy vs. Morgan, 33 An. 833.

Payne vs. Kemp, 33 An. 818.

Judice vs. Nena, 8 An. 485.

The contract could not have been construed otherwise under the statutory conditions under which a wife can claim the return of her separate property by judicial proceedings. C. C. Art. 2425: "The wife may, during the marriage, petition against the husband for a separation of property whenever her dower is in danger, owing to the mismanagement of her husband, or otherwise, or when the disorder of his affairs induces her to believe that his estate may not be sufficient to meet her rights and claims."

Hendricks vs. Wood, 28 An. 1051.

Vickers vs. Black & Co., 31 An. 672.

A consent judgment is valid if the wife's claims are real.

Lehman, Abraham & Co. vs. Levy, 30 An. 745.

One of the exceptions to the rule that the husband and wife cannot contract with each other during coverture, is the right to transfer property to each other in settlement of demands growing out of separate property. C. C. 2446.

Such a sale or transfer when made by an insolvent husband is not subject to the revocatory action. Thompson & Co. vs. Freeman et al., 34 An. 935. There is nothing more intimately connected with public order or public morals, and stability of title than the laws and regulations relating to marriage. Such laws are of necessity a part of the political frame and public eternal policy of all autonomy and ought not to be at the mercy of creditors of the husband, or to be broken, or distorted, or reversed by a suit of bankruptcy simulation enacted by congress, not claiming power to meddle with marriage relation in the States by contract legislation, and congress in the enactment of the general bankruptcy act of April

18th, 1841, realized the fact that the marriage laws of the States were, or ought to be beyond interference, and inserted the proviso that nothing in the act should be construed "to annul, destroy or impair any lawful rights of married women, or minors which may be vested by the laws of the States respectively, and which are not inconsistent with the provisions of the 2d and 5th sections of this act. 5 Statute at Large, 440, 441.

It is true that the same proviso and the same words was not carried into the bankruptcy act of 1867, but this Court in Porter vs. Lazear, 109 U. S. 84, held that this proviso in the act of 1841 was not in the nature of restriction upon the operating words of the act, but a declaration inserted for a greater caution of the construction which the act must have received without any such proviso, and that the omission of the proviso in 1867 did not enlarge the effect of the assignment of the bankrupt's effects by the operation of the bankrupt act so as to include or effect the lawful rights which did not belong to the bankrupt, but to his wife.

And that the wife's dower right in the real estate surrendered by the bankrupt did not vest in the assignee and was not conveyed to the purchaser of the estate on its sale by the bankrupt's assignee. The dower right of the wife is no more a right coming to her by operation of law than is her right to the separate ownership of her separate property and the manner in which it is secured to her in the law of Louisiana.

The right of the complainant was a right to the return of her separate property, to secure which the law gave her a lien on all of the property the husband might acquire while the marriage remained undissolved, by death or divorce. At the time of the surrender of her husband and the bankrupt proceedings, he was not possessed of the property involved in this controversy. His immovable property in the Corinne plantation had been closed out and his title lost, and had become vested in his mother by judicial foreclosure and sale on a mortgage in which

the wife had joined as to that property [illegible] her legal mortgage as she had in law the statutory rights [illegible] do. The Myrtle Grove plantation was not acquired by her husband until after his discharge in bankruptcy. The right of the wife to waive the rank of her legal mortgage in favor of her husband's mother did not annul the antenuptial contract or extinguish her statutory right to a legal mortgage on other property her husband might then possess or afterwards acquire in any parish in Louisiana where the contract was recorded.

Is it possible that the wife was compelled to go into the bankruptcy court and prove up her claim under a marriage contract in bankruptcy proceedings in order that the obligation of the contract and her rights under it might become extinguished and the balance of her married life continue under a different contract relation with her husband from that under which it was contracted, when she could not by any possible convention with her husband effect any alteration in the contract or in any way modify the express terms in which it was written before the marriage, and crystalized by the law of Louisiana by the celebration of the nuptials?

In the case of Long vs. Bullard, 117 U. S. 617, this Court cited with approval the case of Porter vs. Lazear and held that the setting aside of a homestead under the law of Georgia was valid and did not pass to the assignee.

The opinion of the Circuit Court upon which it dismissed the bill in this case is reported in the 39 Fed. 129 and bases, its decree upon an alleged difference between the wife's right of dower at common law and her property rights under the law of Louisiana, which, it is alleged, renders the doctrine in the case of Porter vs. Lazear inapplicable to this case. It is extremely difficult to comprehend any difference in principle between the rights secured by the wife by common law and the statutory rights of the wife in Louisiana that does not put the wife in Louisiana in a better position than is attempted to be accorded

the wife where the common law prevails. The founders of the civil law attempted to make the wife's position better than that accorded to her by the common law, and it is not apparent that they failed.

The doctrine in the case of Porter vs. Lazear is that the bankruptcy law of 1867 was not intended to impair any right of the wife vested in her whether before or after marriage.

The doctrine in the opinion on which the decree appealed from is based destroys all of the rights of the wife, and qualifies and strikes out of existence covenants in a written antenuptial contract, and repeals express provisions of public law, upon the faith of which complainant consented to the nuptial relation and trusted her husband with her separate estate. The opinion in the court below seeks to revoke both the contract and the public law, not by any process of reasoning based upon the bankruptcy act of 1867, or upon the construction of any section of that act, but by considering the relation of man and wife in Louisiana as purely commercial, and placing their obligations to each other, in so far as they relate to any indebtedness or mutual obligation dischargeable in money, on the same plane as the dealings of common traders in commercial commodities or general merchandise, at the same time admitting that it is "not an easy question to solve," but attempting to solve it by reference to Louisiana authorities, citing the case of *Alling vs. Egan*, 11 Rob. (La.) 244, in which the Court, without giving any authority or reason, declared that the wife in that case, being herself a merchant, and having obtained judicial separation of property, caused execution to be levied upon her husband's property to satisfy her debt. After the levy the husband went into voluntary bankruptcy under the federal bankruptcy act of 1841. The Court is made to say: "We must therefore regard the balance of the debt due from the husband to his wife as extinguished by the discharge in bankruptcy." The case is illy considered. The court disregarded, probably for want of knowledge of its ex-

instance, the provision in the act of 1841, that no rights of married women, conferred by the law of any State, should be annulled, discharged, or impaired by the bankrupt act. The construction of the federal statutes by a State court, ignorant of the text of the statute attempted to be construed, should not be considered of much weight by a federal court in the construction of federal legislation on a subject confided by the constitution to congress exclusively.

The case of Dickerman vs. Reagan, 2 An. 440 (La.) is also cited to show that the wife does not require authorization of her husband to administer her paraphernal property, and reasons therefrom, that she could prove a debt in a bankruptcy proceeding. The case cited is a case where the paraphernal property of the wife was a plantation, decreed to be under her own administration and not administered by her husband. There never was any doubt that while the wife is in the actual possession and administration of her paraphernal property she is vested in her own right, with all powers necessary to that administration.

The case at bar is a case where there is no pretense of administration of her paraphernal property by the wife. She did not have the legal possession and administration at the time of the bankruptcy proceedings, and it is difficult to see the application of the case cited. The husband, while he administers the paraphernal property of his wife with her consent, has absolute dominion of the same. It is true that the wife, if the proper conditions can exist, recall the administration of her separate property by suit or separation and restoration of property, when she falls under the operation of Article 105 et seq. of the Code of Practice of Louisiana.

C. P. 105: "A married woman can not sue her husband as long as the marriage continues, except it be to obtain a separation from bed and board, or for the separation of property, or for the restitution and enjoyment of her paraphernal property, or in the case she holds her property separate from him by her

marriage contract, or for divorce; but in no case can she sue her husband without the authorization of the court before which she brings her action.

C. P. 106: A married woman, whether she be of age or a minor, cannot appear in court against any one without the authorization of her husband, although she may be a public merchant, carrying on her trade separate from him, unless she has obtained a separation from bed and board, by virtue of a judgment duly executed, or has been regularly divorced.

C. P. 107: Husbands have under their control the personal and possessory actions to which their wives are entitled, though they be themselves minors; therefore they can proceed judicially, and in their own name, in whatever relates to the preservation of the dotal property, which their wives have brought to them by marriage, as well as to the recovery of the debts due them, these being under their administration.

But actions relating to the ownership of the dotal or paraphernal property of the wife, or of some real right belonging to her, must be brought by the wife, duly authorized by her husband, or by the judge if he fails to do it.

The wife cannot take the first step towards going into Court to recover her separate property without the authorization either of her husband or of the Court, which authorization must be apparent on the face of the papers.

We fail to comprehend how she became invested with the freedom to act against her husband or his estate in a bankruptcy Court, without authorization, and how she could become deprived of her right when she was unauthorized, and while unauthorized, unable to assert that right in a bankruptcy court. It is doubtful, under the limitation of the State law, if either the Court or her husband could authorize her to take action against her husband in a bankruptcy court. It certainly could not, if her action would amount to a judicial proceeding against her husband or his property, as it is not one of the enumerated suits or actions in which she can sue her husband in any event. If he cannot sue her husband withoutauthorization to recover her paraphernal property when it is a question of recovery, how can she be authorized to take judicial proceedings, the result of which would be to destroy a covenant in her marriage

[illegible], if the [illegible] of the [illegible] change in bankruptcy, as was the view of the [illegible].

The case of Howe vs. Bryan, 10 La. 136, is cited; its application to any issue in this case is not clear. It is [illegible] the record in this case to ascertain exactly what was [illegible]. If the case is authority for anything, and it seems never to have been followed, it is a declaration that in a case of judgment against a wife for a debt of her own, her husband not being a party to the judgment, or bound by it, judgment creditors can levy execution on the paraphernal property of the wife at the time under the administration of her husband, without any separation of the property or setting apart of paraphernal property.

This is extremely doubtful law, inapplicable to any issue in this cause.

That the court below misunderstood the doctrine in the case cited, is evident from the independent reasoning of the court in support of its view of the doctrine. "Great force is added to this view from the fact that, unless it should be held that a wife's debt of such a character as is the one here submitted to the court, was provable against her husband in bankruptcy, an estate ample to pay her, and without any outranking privilege, and against a husband who might thereafter acquire nothing, might be administered in bankruptcy and distributed to her exclusion." We respectfully submit that such an occurrence could never happen in any bankruptcy court giving any heed to its powers, its duties, or the law.

The act of 1867 never put it in the power of the bankruptcy court to disturb or destroy liens or privileges on surrender of property, and the assignee took title subject to all liens and privileges limiting the titles taken. If the court allowed an estate affected with a lien or privilege in favor of the wife for the return of her paraphernal property to be sold and the proceeds distributed to unsecured creditors, in disregard of the right of the

wife or of any lien holder or mortgagee, it would perpetrate a wrong not permitted by the statute. A wrong, if not on the mortgagee or the lien holder, at least upon the purchaser at the assignee's sale who, taking the property of the bankrupt, subject to the liens, would have the right to demands, that the price, should go to the discharge of the liens affecting the title. No bankruptcy court claims the power to destroy or affect lines not fraudulent, or resulting from attachment, levied with four months of the bankruptcy. In the case put by the Court the mortgage of the wife would not be affected, unless she had the power to go into the bankruptcy court, and did go in, and indiscreetly abandon her rights and mortgage, by proving her claims as a common debt. It is not pretended that this was done in the case at bar.

Long vs. Bullard, 117 U. S. 621.
Yateman vs. New Orleans Saving Institution, 95 U. S. 764.
Stewart vs. Platt, 101 U. S. 731.
Dudley vs. Easton, 104 U. S. 99.
Cook vs. Tullis, 18 Wall. 332.

It is assigned for error that the Court allowed or gave effect to a plea pleaded by the defendant, Richardson, in his answer to the bill that F. B. Fleitas, the husband, was discharged in bankruptcy by the bankruptcy court, and by the federal bankruptcy act. The plea, if it can be termed a plea, appears in the answer of Richardson, Record, p. 40, and is not in the usual form of a plea of that character, and when pleaded by the bankrupt to whom the plea exclusively belongs in general. The Circuit Court in some way gave defendant the advantage of the plea and made it effective. Just how and upon what grounds does appear clearly in the opinion. The Court held: "The right to plead a discharge so far as relates to a decree and judgment establishing indebtedness is undoubtedly in the bankrupt alone, as is urged in the brief filed by the complainant's solicitors. This plea is, in all respects, like that of infancy and the statute of frauds. The rea-

son is that, though the discharge of a debtor extinguishes the legal obligation for payment, the moral obligation to pay still rests upon the debtor, and no one may elect for him to disregard that obligation." 39 Fed. Rep. 129-30. This statement of the law is undoubtedly correct and should have overthrown the plea even if it has been otherwise regular and pleadable by Richardson against the wife of the bankrupt. This rule, however, was not applied by the Court. The reason assigned by the Court for its disregard for the rule is given in its own words: "This has relation solely to the right of a creditor to recover a personal judgment for a debt against a discharged bankrupt. But the claim of a complainant, when viewed as based solely upon a personal judgment between the complainant and her husband, is altogether ineffectual against the Richardson mortgage, for the judgment was rendered September 10, 1887, and the Richardson mortgage was recorded January 28, 1884. The plea presents the discharge only as affecting the lien. This plea can be urged by any one claiming an interest in the thing adverse to the asserted lien, and is properly presented by the respondents."

It was clearly the intention of the Court to declare and act on the plea in the opinion, that the plea of discharge in bankruptcy is personal to the bankrupt only in a qualified sense; that is, he alone can plead his discharge against indebtedness charged against him, but all the balance of the world can borrow the plea and set it up against his security or mortgage given to secure the payment of the debt sued on, although the mortgage or security is but a mere incident of the debt if they couple the plea with an allegation of interest in the property pledged, even though admitted to be a junior to the lien, against which the plea is launched. If the plea ever had this dual and floating character, there should be some authority on the subject. The court below gave none, and the most diligent search by complainant's counsel has failed to discover any.

It certainly does not stand upon any easily apparent basis of either logic or justice.

1. Because the bankrupt law never assumed jurisdiction

over liens actually existing excepting in enumerated cases in which the wife's lien is not included.

2. Because if the lien had been ascertained and established in the bankruptcy court during the bankruptcy proceedings, that court could not have either disrated or discharged the wife's lien if it existed, or have released the husband's property from its operation or effect.

Can a plea of the husband's discharge in bankruptcy pleaded by a stranger under any circumstances become more potent than the bankrupt law itself.

3. The property affected by the wife's legal mortgage and charged with being subject to the defendant's mortgage was never in the bankrupt court or vested in the assignee so as to be in any manner affected by any action in the bankrupt court, the property being the subsequent acquisition of the husband.

The right of a creditor in Louisiana to collaterally attack a wife's judgment for separation has never extended beyond the question whether the paraphernal, dotal or separate property or obligation to restore the same actually existed, with the husband's liability for the restitution. The decree of separation in this cause was passed upon a notarial act unassailed for fraud. The suit for separation was not only for a return of the twenty thousand dollars paraphernal property, but an action for the recognition of the wife's legal mortgage and a judicial declaration that it took effect from the date of the recording of the marriage contract, and there was a decree not only for the money but that it was secured by legal mortgage on the property involved in this suit, with effect from the 27th day of September, 1870 (record, 19.)

The lower court seems to have held that Richardson could plead the husband's discharge in bankruptcy *only* against that portion of the decree recognizing the mortgage, and not that portion decreeing the return of the money and establishing the amount. The plea, if lawful in a stranger to the bankruptcy

proceeding, if instituted against the [illegible] for the return of the paraphernal property, was [illegible] against the security provided for the payment, or the legal mortgage, because the debt not being disputed but [illegible] legal mortgage in favor of the wife was an inseparable [illegible] incident, the mortgage attaching to the property the moment the legal title vested in the husband. The recital of this fact in the decree was redundancy. Any plea that did not [illegible] of the wife's claim and paraphernal rights was, on its face, insufficient to defeat the mortgage.

The right to plead discharge in bankruptcy is personal to the bankrupt. *Mayer vs. Duey, 103 U. S. 301; Upton vs. Hill, 91 U. S. 5; Hill vs. Harding, 107 U. S. 631; Davis vs. Brinkerder, 104 U. S. 570; Dimmock vs. Copper Co., 117 U. S. 559.*

The record of complainant's marriage contract in the parish of St. Bernard was continuous from 1870, and was never affected as a public record by the unlawful tampering of Philip Toca, the recorder, or by his written memoranda on the margin of the leaves of the record book.

This seems conceded by the court below, and probably will not be disputed here by counsel.

It never was in the power of the Recorder of Mortgages to "erase" a marriage contract. The parties to the contract themselves are incapable of even changing the terms of the contract from the moment of the celebration of the marriage. The wife, under certain conditions, attended with statutory ordained ceremonies and precautions, can change the rank of her legal mortgage in the order of encumbrances on her husband's estate, or a wife in the common law can waive her dower in a particular estate by joining in the deed of mortgage. Nothing more is permitted by the law of Louisiana; in fact, any other change is prohibited.

The entries made by Toca could deceive no person, professional or layman. The entry to the effect that the contract was

erased by a judgment of the United States Circuit Court, held by E. C. Billings, Judge, is false. No such decree, judgment or direction or even suit or proceeding to which the parties to the marriage contract were either plaintiffs or defendants, ever existed in the federal circuit court. If it is claimed that Toca meant the District Court that court neither had jurisdiction over a direct proceeding to cancel a mortgage nor did it ever acquire any such indirect authority as a bankrupt court. Fleitas, the bankrupt, at the time of his surrender in bankruptcy, had no real estate to surrender; if he had surrendered any, the bankrupt court could not affect any mortgage bearing on it. The property in this controversy was acquired by the husband long after his discharge in bankruptcy, and, therefore, never was subject to the jurisdiction of the bankrupt court in any form in the proceeding in which the husband was discharged. There is uncontradicted proof that neither the complainant nor her husband knew of the entry made by Toca, or of any meddling with the record of the marriage contract until 1888.

The other marginal entry made by Toca, where he pretends to "erase" the contract upon the authority of the sheriff of St. Bernard is nothing but meddlesome, ineffectual scribbling. No sheriff in Louisiana ever possessed judicial authority or could authorize the cancellation of mortgages or represent either the judgment creditor or the judgment debtor in erasing mortgages or discharging liens.

"Art. 3371, C. C.—Inscriptions of mortgages and privileges are erased by the consent of the parties interested and having capacity for that purpose; this consent to be evidenced by a release, or by a receipt given on the records of the court rendering the judgment on which the mortgage was founded."

"Art. 3372.—Inscriptions of mortgages and privileges may be also erased by virtue of a judgment ordering such erasure, in one of the cases hereafter enumerated."

Art. 4374 provides that in case the release is by authentic act the mortgage may be cancelled upon exhibition of a certificate from the notary, certifying that such an act of release exists and is

on deposit with him. The certificate must, however, file in the recorder's office.

Art. 3375 provides in the event of release under private signature, the document must be acknowledged by the maker or proved by one of the subscribing witnesses in all cases, except where the recorder knows the signature of the maker, and is willing to take the responsibility of the erasure himself.

Art. 3376 gives the mortgagor an action to compel the mortgagee to release in the event of a refusal.

Art. 3377 gives the same remedy where the mortgagee refuses to release as to separate installments paid.

Art. 3379 provides for the release where the mortgagee absents himself from the State, vesting the courts with power to make judicial inquiry and decree release at the cost of the mortgagee.

Arts. 3380 to Art. 3395, inclusive, relate to procedure and judicial release. Section 2399 of the Revised Statutes authorizes the recorder, on application in writing by the owner, or any person in interest, to cancel all mortgages recorded for more than ten years without reinscription, excepting legal mortgages in favor of a wife, minor or interdict, etc.

It is not pretended that the sheriff of the parish of St. Bernard ever held any procuration from the complainant or her husband or that she knew of the entry.

We respectfully submit that the court below erred in dismissing the bill, and the decree appealed from should be reversed and the complainant have relief, as prayed for in her bill.

J. R. BECKWITH,

Counsel for the Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891. No. 483.

MRS. MARY CORINNE WARREN FLEITAS,

APPELLANT,

VERSUS

GILBERT M. RICHARDSON, ALBERT E. SHATTUCK, FRANK HOFFMAN ET AL.,

APPELLEES.

The appellant, Mrs. Mary Corinne Warren Fleitas, with the assistance of her husband, F. B. Fleitas, the appellant in case No. 299, instituted suit on 30th December, 1889, in the Civil District Court for the parish of Orleans, against Gilbert M. Richardson, Shattuck & Hoffman, the British and American Mortgage Company, Limited, and W. F. Mellen, attorney in fact of Richardson, the object of which was to enjoin the defendants from taking any legal proceedings to foreclose a mortgage executed by her husband on 28th January, 1884, in favor of Richardson, a citizen of New York, to secure the payment of a loan of $63,000, evidenced by five promissory notes of $12,500 each, due respectively in January, 1886, 1887, 1888, and 1889, with 8 per cent. interest from date, which interest was represented by coupon notes.

This mortgage covers two tracts of land situated below the city of New Orleans, in the parish of St. Bernard. One tract was known as the "Myrtle Grove" plantation and was acquired by the husband, F. B. Fleitas, in 1882, and the other was known as the "Corinne" plantation, and was acquired by the husband after 25th April, 1877, the date of his discharge in bankruptcy.

The loan which was secured by this mortgage in favor of Richardson was negotiated through the defendants, Shattuck & Hoffman. The agreement under which the negotiation was had is found at p. 89, and is dated 28th January, 1884.

It provides that Shattuck & Hoffman will, as agents for Fleitas, undertake to negotiate for him a loan of $63,000, one-fifth payable annually on 1st January, 1885, 1886, 1887, 1888 and 1889, with 8 per cent. interest annually, the interest to be represented by coupon notes; the loan to be secured by *first* mortgage on Corinne and Myrtle Grove plantations.

The consideration to be paid to Shattuck & Hoffman was a commission of two and one-half per cent. on the loan of $63,000, and the shipment to them by Fleitas of all his crops for sale, the gross proceeds of which he guaranteed should not be less than $80,000 in any year.

It was estimated in the instrument that Fleitas would need of said loan the sum of $25,000 to pay his indebtedness to Lehman, Abraham & Co., and the further sum of $12,000 to pay certain liens and mortgages.

The balance of the loan was to remain in the hands of Shattuck & Hoffman, to be drawn against by Fleitas, in monthly instalments of $3500 each.

No other provision in the agreement is it material to notice.

The defendants to this suit of Mrs. Fleitas being aliens or citizens of other States than Louisiana, removed it to the United States Circuit Court, in New Orleans, on 24th

January, 1888. Mellen, although a citizen of Louisiana, has no interest in the controversy, and he is not an appellee (see appeal bond, p. 182). The fact is, he was a mere attorney in fact to accept the act of mortgage in favor of Richardson.

The removal to the Circuit Court was founded not only on the citizenship of the parties, but on the fact that the suit involved the interpretation of the bankruptcy laws of the United States, and the legal effect of a discharge in bankruptcy (see petition for removal, p. 33).

The ground on which Mrs. Mary Corinne Warren Fleitas based her right to an injunction was, that she had become the owner of the two plantations by purchase at sheriff's sale in the parish of St. Bernard on 19th November, 1887.

This sale, it is alleged, was made under a writ of *fieri facias* issued on a judgment recovered by her on 10th September, 1887, in the District Court of the parish of St. Bernard, against her husband, in a suit for separation of property and restoration of her paraphernal claims (p. 19).

This suit of Mrs. Fleitas against her husband was instituted September 3, 1887. The petition alleges that her husband is largely in debt, and there is great danger that his estate will not be sufficient to meet her claim, which amounts to $20,000—a sum of money given to her by her parents at the time of her marriage, on 6th February, 1868. This money her husband had appropriated to his own use, and to secure it she had a legal mortgage on his property resulting from the registration of the marriage contract in the parish of St. Bernard on September 27, 1870 (pp. 13–14).

The husband filed his answer on September 7, 1887, the case was submitted to the court on the 10th of September, 1887, and on the same day judgment was rendered

in favor of the wife for $20,000, with recognition of her legal mortgage to take effect from September 27, 1870. The judgment also dissolved the community and decreed a separation of property.

I do not find in the transcript any writ of *fieri facias* issued on this judgment, but the sheriff's deed, dated 19th November, 1887, shows that after publication in the parish journal, called the "St. Bernard *Eagle*," the two plantations were sold to Mrs. Fleitas for the sum of $20,000, which she retained in payment of her judgment, less $902.05 for costs and taxes (pp. 126–132).

The defendants were awakened to this condition of things by the service on Shattuck & Hoffman and on Mr. Mellen, of the writ of injunction issued by the Civil District Court of New Orleans, at the instance of Mrs. Fleitas, on 31st December, 1887, just the day before one of the notes given by her husband to Richardson fell due. (p 28).

This injunction restrained the defendants from attempting to foreclose the mortgage given by F. B. Fleitas to Richardson on 28th January, 1884, to secure the above mentioned loan of $63,000.

The answer of Richardson filed in the Circuit Court after the removal of the case states that when he made the loan of $63,000 to Fleitas, the money had been furnished to him by the British American Mortgage Company, limited, with the request to take the mortgage in his own name, and he had at the time no knowledge whatever of the legal mortgage of Mrs. Fleitas, which had been recorded in the parish of St. Bernard on September 27, 1870.

How did that happen? The court will notice that in the act of mortgage executed by Fleitas on January 28, 1884, the incumbrances on the property are recited; the recital is founded on the certificate of the recorder of mortgages annexed to that act. The vendor's lien of $9000 on Myrtle Grove plantation is mentioned; also, the debt of $25,000 in favor of Lehman, Abraham & Co., both of

which were paid off by Richardson's loan, as provided in the negotiation agreement with Shattuck & Hoffman (see account of Shattuck & Hoffman, p. 95). Other liens are also mentioned in the recorder's certificate, but not a word is said of the wife's legal mortgage of $20,000 (p. 24).

It appears that F. B. Fleitas in 1871 mortgaged Corinne plantation to one Bertus to secure the payment of $28,000; Mrs. Fleitas intervened in the act, and in due form of law renounced her legal mortgage (pp. 154-5).

This mortgage was foreclosed in 1874, and Mrs. B. Fleitas, the mother of F. B. Fleitas, became the purchaser at sheriff's sale. See sheriff's deed, p. 118-122.

As the wife had renounced her legal mortgage in favor of Bertus, the mortgagee, when the sheriff sold the property under that mortgage, he directed the Recorder to cancel the inscription of the wife's legal mortgage on the records of his office. This was done 18th March, 1874 (p. 52).

Again: B. F. Fleitas made a surrender in bankruptcy in 1876, and obtained his discharge on 25th April, 1877 (p. 181). Some one caused the recorder of mortgages in the parish of St. Bernand to again erase the wife's legal mortgage by an entry in these words: "Erased and cancelled by virtue of a judgment rendered by the United States Circuit Court, Judge E. C. Billings presiding, April 25, 1877" (p. 52).

The court will notice that this erasure was made on the very day the bankrupt discharge was granted, 25th April, 1877.

The appellant has shown that there was no such judgment in the Circuit Court, and I infer the Recorder made a mistake in describing the court, and the erasure was based on the discharge in bankruptcy.

The wife's legal mortgage stood on the records of the Recorder's office, thus erased when he furnished the

certificate annexed to the mortgage given to Richardson 28th January, 1884, and hence the wife's mortgage is not mentioned in the certificate.

The money of Richardson was lent to Fleitas on the faith of his representation contained in the negotiation agreement, that the mortgage to secure the loan was a *first* mortgage, and on the faith of the representations contained in the certificate signed by the recorder of mortgages as to the incumbrances on the property.

In his answer, Richardson avers that the recovery of the judgment against F. B. Fleitas by his wife, and the decree for separation of property and the sale of the two plantations in November, 1887, under a writ of *fieri facias* issued by the wife on her judgment, and all the proceedings leading thereto, were secret and clandestine and the result of a combination to cut off his mortgage.

As to the erasures of the wife's mortgage, the proof is that they are in the handwriting of Philip Toca, the parish recorder, who is dead, and the sheriff of the parish, produced as a witness by the complainant, says "he gave the order to erase all the mortgages against Corinne plantation, but there was no such mortgage as that of Mrs. Mary Corinne Warren Fleitas upon it" (p. 163). He further says:

"I remember distinctly there had been a renunciation made in favor of the widow, Mrs. B. Fleitas. I was very familiar with Mr. Fleitas' business at the time." He tells us the renunciation was contained in the mortgage under which the sale was made (page 163), and this was the Bertus mortgage of which the widow B. Fleitas had become the owner. The complainant offered in evidence the two erasures of the wife's mortgage (page 165), but no attempt is made to explain the erasure of 25th April, 1877, other than the production of the complainant herself as a witness, to state that she knew nothing about the erasures and never authorized them (page 167).

On the removal of the cause to the Circuit Court the defendant made a motion to dissolve the injunction granted by the State court. After argument, the court on June 22, 1888, allowed the defendants "to proceed to foreclose their mortgage, and to enforce payment of the mortgage debt claimed by them, notwithstanding the injunction, but in case said foreclosure proceedings are conducted to seizure of the plantations, etc., mentioned in the bill of complaint, the defendants, after causing said seizure, shall not proceed to advertisement and sale of the property seized until the further order of this court, but the defendants shall have leave to apply to the court, or any judge thereof, for a modification of the order, or for such other relief or remedy as they may be advised they are in equity entitled to, and the defendants must submit themselves to the further order of this court on their foreclosure proceedings after seizure" (p. 59).

Then Gilbert M. Richardson, on 29th June, 1888, filed his bill to foreclose his mortgage, and, according to Louisiana practice, asked for an order of seizure and sale. Bill, p. 75; Order, p. 78; Notice to Fleitas, p. 75.

On July 10, 1888, the appellant filed an amended and supplemental bill, in which she complained of the foreclosure proceeding, and of the order of seizure, and asked that they be declared null and void.

As I have stated, Richardson's bill for foreclosure was filed 29th June, 1888, and thereupon the court made the following order:

"Let a writ of seizure and sale issue herein, as prayed for and according to law, to satisfy complainant's demands, as set forth in the foregoing bill and petition; let the marshal seize and take into his possession, according to law, the property described in the foregoing petition, and *then let the sale of the property be stayed till the further orders of this court*" (page 136).

On 30th June, 1888, notice was served on F. B. Fleitas,

to the effect that unless payment of the mortgage debt was made within three days, the mortgaged property would be seized and sold subject to the order on the bill of complaint (page 143).

On the same day, F. B. Fleitas filed an application for a writ of error, and an appeal from the order of seizure (page 144). This application was refused, but no steps were taken in the case until November 19, 1888, when Fleitas made a motion to quash the executory process on the ground that the court had no authority to make the order of seizure, which had been rendered on 29th June, and in the same motion the application for a suspensive appeal and supersedeas was renewed (page 145-6).

The result of this motion is found at page 152. The court re-considered the whole matter and directed that so much of the order of 29th June, 1888, awarding executory process, as directs the marshal to stay the sale of the property directed to be seized until the further orders of the court, be stricken out, and that all subsequent orders, except the order of reference to the master, be revoked, and that an appeal to operate as a supersedeas be allowed *nunc pro tunc* as of 30th June, 1888, on the defendants, giving bond in the sum of $1000, and that the marshal on the filing of said bond do release the property from seizure.

The answer of Richardson shows that the marshal did not seize the property until late in the fall of 1888, because of a desire on the part of Richardson to accommodate the appellant and her husband, who had held out hopes of settlement (p. 83). In fact, the writ was not issued until the 22d of November, 1888 (see writ and brief of appellant in No. 299).

The mortgage at this time, with interest and attorney's fees, amounts to nearly $38,000.

Mrs. Fleitas has no interest in the regularity of the proceedings against her husband. If her title under the

judicial sale in November, 1887, was superior to that of Richardson under his mortgage, she had a right to complain of the seizure of her property; but the property was not seized until the end of November, 1888, and the seizure was released by the order of the court on the 7th of December, 1888 (p. 28 in No. 299).

Yet the supplemental bill of the appellant filed on July 10, 1888, complains of the executory proceedings against her husband, although at that time she was not affected by them, because no seizure had been made.

The truth is, that the order given in June, 1888, on Richardson's bill for executory proceedings, was not, in law, an order for executory process, which must be an order *to seize and sell*. C. P., Art. 734 (see brief filed in No. 299); an order *to seize*, but not *to sell* till further orders of the court, is not executory process.

The order gives directions to the marshal to seize the property and "then let the sale be stayed till the further orders of this court." This was nothing more than the appointment of the marshal as receiver of the mortgaged property. The marshal had no writ in his hands authorizing him to take possession of the property until the 22d of November, but the court, by its order rendered December 7, 1888, amended the previous order and converted it into an order of seizure and sale, by striking out the stay clause, and in the same order the appeal was granted, and the marshal was directed to surrender possession.

So that, in point of fact, at no time was the property in possession of the marshal under any order of seizure and sale, and by that I mean executory process.

Hence, in this suit Mrs. Fleitas had no interest in the proceedings directed against her husband.

Trezevant vs. Sheriff, 38 La. An. 146.

The only question which she has a right to agitate is the

validity of her title under the judicial sale in November, 1887.

Her contention is that on 10th September, 1887, she recovered a valid judgment against her husband for $20,000, with recognition of her legal mortgage, to take effect from 27th September, 1870, the date on which her marriage contract was registered in the parish of St. Bernard, and that the sale under execution issued on said judgment, vested in her as purchaser, a title to the property free from the encumbrance in favor of Richardson created by the mortgage of 1884.

If her contention be sustained, no doubt a great wrong will have been done, and she will have acquired for $20,000 a valuable estate which cost her husband more than $50,000. He paid for "Myrtle Grove," in 1882, $18,000, and for Corinne plantation, in 1877, $39,924.30 (see acts of sale, pp. 115, 116, and 123, 125).

Our contention is that the discharge which her husband obtained from the Bankruptcy Court, on 25th April, 1877, released the debt due to his wife, and with it the legal mortgage recorded in 1870; that the subsequent judgment recovered by her, in 1887, might be valid as a personal judgment against her husband, but it could not revive the legal mortgage against Richardson, who acquired title before the judgment, and therefore that the sheriff's sale made in 1887 was null and void as to him.

If the Richardson mortgage outranked the legal mortgage of the wife, the sheriff had no power to sell the property under the wife's execution, because the amount bid at the execution sale did not exceed the amount of Richardson's prior mortgage.

The Circuit Court dissolved the injunction which had been obtained in the State court, and rendered a final decree in favor of Richardson. (See Opinion, pp. 184–187.)

ARGUMENT.

I.

In considering this case, the court will bear in mind the law of Louisiana regulating sales under execution.

Article 684 of the Code of Practice declares that if the price bid at the sheriff's sale does not exceed the amount of mortgages on the property having a preference over the seizing creditor, "there shall be no adjudication."

In Perry Sydic vs. Holloway, 11 Rob. 110, the court said, "According to Articles 683 and 684 of the Code of Practice, privileges and special mortgages on property offered for sale by the sheriff in favor of other persons than the seizing creditor, and which are preferred to him, form essentially a part of the price for which it may be sold, and it can not be sold unless something was offered over and above their amount." See also:

Fernandez vs. Bein, 1 La. An. 32.
Trudeau vs. McVicar, 1 La. An. 426.
Haynes vs. Courtney, 15 La. An. 634.

II.

The bankruptcy discharge granted to Fleitas by the United States District Court, on 25th April, 1877, released him from liability to his wife on account of her alleged claim.

At the time the discharge was granted by the Bankruptcy Court Mr. Fleitas owned neither of the plantations involved in this suit. He acquired Corinne plantation from his mother on 28th April, 1877, she having purchased it at execution sale on proceedings against her son in 1874. (See act of sale, p. 123.) He acquired Myrtle Grove plantation on 7th January, 1882, from Lemarié.

Therefore, when the discharge was granted, the debt

due by the bankrupt to his wife was a purely personal debt, and did not operate as a legal mortgage on the two plantations, because they were not owned by the bankrupt at that time. Therefore, the question is not the effect of the bankrupt's discharge on an existing mortgage—there was no mortgage to be affected by the discharge—but the question is the effect of the discharge on the debt.

It was contended in the court below that the debt due to the wife was a fiduciary debt. With her permission Fleitas administered the paraphernal property of his wife, and therefore, during his administration, the revenues belonged to the community. The right of a husband on the paraphernal property of his wife under his administration is like that of an usufructuary.

Wimbish vs. Gray, 10 Rob. 46.

He can, for that reason, lawfully use his wife's money.

Miltenberger vs. Keys, 25 La. An. 288.

And for the same reason he can receive his own debt in payment of a debt due to her.

Rousse vs. Wheeler, 4. Rob. 119.

For the same reason the husband owes no interest on the debt due to his wife.

Buras vs. Thompson, 39 La. An. 384.

She can, however, resume the administration of her paraphernal property whenever she choses to do so.

39 La. An. 384.

There is, therefore, nothing in the character of the debt which makes it fiduciary either in the sense of the insolvent law of the State, or of the bankrupt law of the United States. What is a fiduciary debt in the view of the bankruptcy court is settled by the court in Hennequin vs. Clews. 111 U. S. 681.

As a general rule, the wife can not bring suit against her husband during the marriage; one of the exceptions to the rule is, that she may sue him for the restoration of her paraphernal claims, unaccompanied by any demand for

dissolution of the community, or for separation of property.

Irby vs. Weber, 35 La. An. 868.

In the case of Hawes vs. Bryan, 10 La. 136, there was a debt due the wife from her husband, arising from the receipt by him of money belonging to her paraphernal estate; this debt had been seized and sold under an execution upon a judgment against her. There had been no separation of property or other dissolution of the community. The court held that the debt was subject to seizure, and that the creditors who had bought it at sheriff's sale obtained a valid title to it. In speaking of this case, the judge of the Circuit Court says: "This case seems to dispose of the argument that there is any quality impressed upon such a debt by reason of its existing in favor of a wife against a husband, which would prevent its extinguishment by any cause which would extinguish any other debt; for, if it is so independent of the marital relation, that it may be made to pass from her, and be acquired by her creditors by suit and seizure, it is difficult to see why it is not for this same reason capable of being destroyed by the discharge in bankruptcy" (pp. 186–7).

In Planters Bank vs. Lanusse, 12 Martin, 162, the wife having a paraphernal claim against her husband, was allowed to prove it, and vote on it as a creditor at a meeting of creditors held under the insolvent laws of the State to elect a syndic of the insolvent. That was a case of forced surrender, as will be seen by an examination of the record on its first appearance in the Supreme Court of Louisiana, 10 Martin, 690.

In Alling vs. Egan, 11 Rob. 244, a wife had a separation of property, a judgment and execution against her husband partly satisfied; he then went into bankruptcy and obtained his discharge. It was held that the balance due by the husband to his wife, was extinguished by his

discharge, and that, consequently, she had no right to issue n execution, and that any property acquired by him afterward, was free from any claim on her part.

It is urged that in this case Mrs. Fleitas, at the time of her husband's discharge in bankruptcy, had not been separated in property, and that she was not capacitated to sue. But our Code expressly provides that the wife at any time may resume the administration of her paraphernal property. Article 2387 declares that "the wife who has left to her husband the administration of her paraphernal property may afterwards withdraw it from him."

Article 2384: "The wife has the right to administer personally her paraphernal property without the assistance of her husband."

Article 2385: "The paraphernal property which is not administered by the wife separately and alone is considered to be under the management of her husband."

Article 2386: "When the paraphernal property is administered by the husband, or by him and the wife indifferently, the fruits of this property, whether natural, civil, or the result of labor, belong to the conjugal partnership, if there exist a community of gains," etc.

Any manifestation of the wife's will to resume administration of her paraphernal property is sufficient; any act of administration is of itself a resumption of such administration.

Terrell vs. Cutrer, 1 Rob. 368.

Cowand vs. Pulley, 11 La. An. p. 1.

Brooks vs. Wiggington, 14 La. An. 687.

Nor is the authorization of her husband necessary to any act of administration.

Dickerman vs. Reagan, 2 La. An. 440.

Brooks vs. Wiggington, 14 La. An. p. 687.

Bump, in his work on bankruptcy, says that money loaned to the bankrupt by his wife out of her separate

estate is a claim that may be proved against the bankrupt.

Bump, 563.

Among other cases he cites *in re* Blandin, 1 Lowell 543.

In the present suit we have none of the difficulties which were encountered by the judge who delivered the opinion in the case of Blandin. In that case the judge said: "It is very doubtful whether such a debt could have been proved under the insolvent law of Massachusetts, for that law was considered to refer only to legal debts, but I have little doubt that *equitable* debts are within the scope of the bankrupt act."

The judge of the Circuit Court concludes his opinion in this case with this remark: "Great force is added to this view, from the fact that, unless it should be held that a wife's debt, of such a character as is the one here submitted to the court, was provable against her husband in bankruptcy, an estate, ample to pay her, and without any outranking privilege, and against a husband who might thereafter acquire nothing, might be administered in bankruptcy, and distributed to her exclusion. It would seem that Congress must have intended such a debt to be provable. If the debt is provable, it is extinguished by the discharge."

The English authorities are referred to in the case of Blandin, and among them are *Ex-parte* Thring, Mont. & Ch., 75; *Ex-parte* Wiltz, 2 M. D. & DeG., 504.

III.

The erasure of the legal mortgage of the wife on the production of the decree in bankruptcy was legal and proper.

It was so expressly decided in Diggs vs. Prieur Recorder, 11 Rob. 55. In that case judgments were rendered against Diggs, the bankrupt, and therefore they operated

on his future acquired property. After his discharge he took a rule to have the judicial, as well as certain conventional, mortgages, erased. The court said "that the bankrupt being discharged, he is entitled to the benefit of his certificate, and it is not proper that mortgages should stand upon the records affecting any future property the bankrupt may acquire. The certificate granted to Diggs operates as a discharge of his debts, except those of a fiduciary character, contracted at any time previous to the filing of his schedule in the United States court, unless in some subsequent action it shall be shown the certificate was fraudulently obtained. It is, therefore, not legal nor just, in our opinion, in the absence of any charge of fraud against the bankrupt, that mortgages should stand recorded operating on future property, when the debts secured by those mortgages can not be recovered except upon the contingency of the certificate being impeached and annulled for fraud in procuring it."

IV.

The mortgage in this case was granted by the bankrupt after his discharge, on property also acquired by him subsequent to that time. In such case the mortgagee can plead the husband's discharge in bankruptcy against the wife's antecedent claim in so far as it affects the property mortgaged.

Such is the express ruling of the Supreme Court of Louisiana, in Upshur vs. Briscoe, 37 La. An. 153. The court says: "It is urged, however, that as the discharge in bankruptcy is not pleaded by the heirs of Briscoe, but only by his widow, whose title to the property sought to be subjected to the debt is herein attacked as a fraudulent simulation, is not entitled to the benefit of such discharge which is personal to the bankrupt. The plaintiffs, in support of this proposition, rely upon the

case of Moyer vs. Dewey, 103 U. S. 301. That case is differenced from this by two distinctions which destroy its application: (1) The transfer of the property there attacked took place prior to bankruptcy, while that here assailed arose subsequently thereto, so far as Mrs. Briscoe is concerned. (2) Judgments had been rendered against the debtor in that case subsequently to the bankruptcy, although founded on debts existing prior to his discharge.

"Thus the attacking creditors in that case were unquestioned creditors at the date of the transfer, and they remained creditors by subsequent judgment at the date of the suit. But here the transfer to Mrs. Briscoe took place *after* the discharge in bankruptcy, *at a time when the defendants* here sued on *were barred and without revival by subsequent judgment.* As we have held in the case of Scott vs. Castleman, decided this day, the heirs were estopped from attacking Mrs. Briscoe's title in their own right, we can not admit that by simply omitting to plead the discharge of their ancestor, they can *turn loose* upon Mrs. Briscoe the creditors of their ancestor, whose debts were barred at the time when she acquired her title. Mrs. Briscoe, deriving her title, as is alleged, from Briscoe, is entitled to the full benefit of the position in which he stood at the date of the transfer, and to all the defenses resulting therefrom. She can not be deprived of the benefit of his discharge in bankruptcy by the failure of his heirs to plead it, but is entitled to plead such discharge in her own defense."

A similar principle was applied by the court in the case of the N. O. Canal Bank vs. Recorder, 27 La. An. 292. After a mortgage note had been prescribed, a judgment was recovered by an ordinary creditor and registered in the mortgage office. Subsequently the mortgagor executed a written waiver of prescription; the court held that the waiver renewed the debt, but did not revive the mort-

gage as to the judgment creditor having a judicial mortgage, or to the prejudice of such creditor.

The case of Kugler's Succession, 23 La. An. 455, is to the same effect, where the court held that a promise to pay a prescribed debt "created a *new* debt binding on the deceased and his succession, but it did not renew or create a mortgage, at least as to third persons."

V.

The answer of Richardson, the mortgagee, to that part of the petition of the complainant which sets up her paraphernal claim of $20,000, the suit thereon in September, 1887, and the judgment and execution and sale of the plantations, attacks the validity thereof, and avers that "as to this respondent said seizure and sale, and said sheriff's deed, were and are null and void; that said suit, said judgment, and said seizure and sale, and said purchase, were brought about by a combination and collusion between said F. B. Fleitas and said complainant, for the purpose and with the design of cutting out and extinguishing the mortgage held by this respondent, and the foreclosure of which has been enjoined in this suit; that though the forms of law in said proceedings may have been substantially complied with, but which respondent denies, the law and the process of the courts have been abused in said suit, judgment and seizure and sale, in that no notice thereof was given to this respondent, and that the mortgage herein of respondent was a first lien and encumbrance on all of said plantations, and was not paid off or assumed by said Mrs. Fleitas, and everything was conducted in a quiet and clandestine manner, so as purposely to keep all of said proceedings from the knowledge of this respondent, in the interior of a sparsely populated country parish, remote from commerce, and by publication in a parish newspaper of extremely limited circulation,

and said property was adjudicated to the complainant at a sum not exceeding, but less than one half, its value; that owing to the studious secrecy of all said proceedings, although said sale took place in a season of fine crops, and when such property was in demand, no one was present at said sale to bid on the said property, and said plantations were adjudicated in bulk to the complainant, at a merely nominal sum, to the great wrong and injury and damage of this respondent; that this respondent had no knowledge of said proceedings or of the complainant's claim until the institution of this suit" (p. 38).

These averments are reiterated by adoption in the answer to the amended bill of complaint (p. 85).

The answer imposed the burden of proof on the wife to establish, as against her husband's creditors, the validity of her claim. In Adams vs. Creditors, 14 La. 459, the court say: "Appellee's counsel has contended that Mrs. Andrews' judgment is conclusive and binding, and that some evidence or color of fraud must be shown before she can be put to the proof of her claim. We consider it well-settled law on this subject that the allegation of fraud and collusion has the effect of putting the party to the proof of the facts on which the judgment purports to be based. It implies that no evidence was given nor a *proper defence* made; it involves, then, a negative, and the *onus probandi* must be on the party who avers that full proof has been made and that the judgment was rendered *without collusion*, because the assertion of his adversary is not susceptible of proof."

It was held in Dimitry vs. Pollock, 12 La. 303, that if the wife obtained judgment against her husband without *any proper defense* on his part, and she seeks to enforce it against property on which a third person had acquired rights, such third person may properly urge that she acts fraudulently and produce the absence of a proper defence as evidence of collusion.

When the answer alleges collusion, the burden is on the wife to establish the truth and foundation of her judgment.

Malone vs. Kitching, 10 La. An. 87.

Bogan vs. Finlay, 19 La. An. 97.

If Fleitas had set up against his wife's demand his discharge in bankruptcy, the court could not have rendered even a personal judgment against him, much less a judgment with recognition of mortgage to take effect from 1870, to the prejudice of intervening mortgage creditors.

N. O. Canal Bank vs. Recorder, 27 La. An. 293.

VI.

Third persons having an interest are entitled to plead against the wife any defense to her demand which her husband could have urged; indeed this is a general rule of the civil law.

The Louisiana Code, Article 3528, says: that "the prescription which operates a release from debts *discharges* the debtor by the mere silence of the creditor during the time fixed by law, from all actions, real or personal, which might be brought against him."

Article 3466 provides that "creditors and all other persons who may have an interest in the acquiring of an estate, or the extinguishment of an obligation by prescription, shall have a right to plead it, even in case the person claiming such estate, or bound by such obligation, shall renounce such right of prescription."

The civil law accords to the creditor the exercise of all the rights and actions of his debtor, with the exception of those that are exclusively attached to the person. The Code Napoleon has an express article on the subject, and in the Gaines case, 131 U. S. 213, Mr. Justice Bradley said: "It is true that the Louisiana Code has no such article, but it is said by writers of authority that this prin-

ciple prevails in French jurisprudence without the aid of any positive law."

Hence, it has been held in Louisiana that the husband can not abandon or fail to assert a claim against his wife, to the detriment of his creditors.

Hayden vs. Nutt, 4 La. An., p. 69.

The Code expressly provides, in Arts. 1990-91-92, as follows:

"In case the debtor refuse or neglect to accept an inheritance to the prejudice of his creditors, they may accept the same and exercise all his rights in the manner provided for in the title of succession, and they are authorized, by virtue of the action given by this section, to exercise all the rights existing in favor of the debtor for recovering possession of the property to which he is entitled, in order to make the same available to the payment of their debts."

Art. 1991. "There are rights of the debtor, however, which the creditor can not exercise, even should he refuse to avail himself of them.

"They can not require the separation of property between husband and wife; nor can they oblige their debtor to accept a donation, *inter vivos*, made to him, nor can they accept it in his stead; neither can they call on a co-heir of the debtor to collate when such debtor has not exercised that right."

Art 1992. "There are also rights which are merely personal, that can not be made liable to the payment of debts, and therefore no contract respecting them comes within the provision of this section; these are the rights of personal servitude, of use and habitation, of usufruct of the estate of a minor child, to the income of dotal property, to money due for the salary of an office, or wages, or recompense for personal services."

In a recent case decided by the Supreme Court of Louisiana, the principle contended for was recognized

and enforced. In that case W. S. Benedict sold to one Klotz land and buildings in New Orleans for $50,000, the vendor promising to cancel a mortgage for $10,000 resting on the property sold. Klotz, the purchaser, paid for the property, to Benedict, $10,000 in cash, and gave his notes for the residue of the purchase money. A creditor of Klotz, having recovered a judgment against him, recorded it in the mortgage office, and then issued execution, under which the sheriff seized the land and buildings.

The mortgages resting on the property, according to the certificate from the mortgage office, exceeded its value, and therefore the sheriff could not sell the property under the writ of execution.

Thereupon the seizing creditor brought suit against Benedict, the vendor, and Klotz, the vendee, wherein he sought the aid of the court to compel Benedict, the vendor, to pay off the $10,000 mortgage, which he had promised in the act of sale to Klotz to have cancelled, and also to reduce Benedict's mortgage to the extent of certain notes which the vendee had paid him on account of the purchase price. Klotz, to whom Benedict had made the promise to cancel the $10,000 mortgage, resisted the suit of the seizing creditor, and refused to demand of Benedict compliance with his promise. The question was this: could the seizing creditor exercise the right which Klotz, the seized debtor, had against Benedict; the court said the promise made to him by Benedict could not be renounced by Klotz, to the detriment of his creditors. "Having a right which he does not choose to enforce, the question arises as to whether his creditors, whose claim is secured by mortgage, can compel compliance." The mortgage of the creditor resulted from the registration of his judgment, and is called a judicial mortgage. The court proceeds: "The Civil Code does not in express terms authorize creditors to exercise all the rights and

actions of their debtors. This court has not heretofore decided that only such rights and actions of creditors may be exercised as are expressed. * * * If not maintainable on equitable grounds, there is a principle of the civil law obtainable in Louisiana, by the aid of which there can be no doubt of its being maintainable. New Orleans vs. Gaines, 131 U. S. 215."

The court here adopts the opinion of Mr. Justice Bradley in the Gaines case. After referring to several articles of the Code, and among them to the above, quoted Articles 1990 and 1991, the court proceeds thus:

"Despite the debtor he (the creditor) may plead prescription his debtor declines to plead, or may choose to waive. These rights are not exclusive. The property of the debtor is the common pledge of his creditors."

The court here refers to the general principle on which the French authors found the doctrine expressed in Article 1166 of the Code Napoleon, which declares that creditors may exercise all the rights and actions of their debtor except those exclusively attached to the person.

Demolombe informs us that although the Code says the property of the debtor is the common pledge of his creditors, it is a collective and an imperfect pledge upon all the debtor's property, and it is not fixed determinately on any particular object, nor does it confer on the creditors a *jus in re*, but merely a *jus ad rem*.

Hence, says he, the debtor always remains at the head of the government of his patrimony or estate, free to act or not to act, and to acquire or to alienate.

Such is the normal situation of the debtor and of his creditors; hence it is easy to perceive the grave dangers which the situation presents to the creditors.

There are two dangers especially grave:

1. The negligence of the debtor in exercising the rights which belong to him; a negligence the more to be feared from a debtor who is insolvent, depressed, discou-

aged and indifferent to the exercise of a right, the results of which will inure to the benefit of others.

2. The fraud of the debtor, which is equally to be feared when the debtor is not honest, and where he can obtain a benefit, to the exclusion of his creditors.

Article 1166 of the Code Napoleon is directed against the first evil, and, hence, it authorizes the creditor to exercise the rights and actions of his debtor, while Article 1167 is directed against the second evil; hence, it provides for the annulment of *acts done* by the debtor in fraud of creditors. Both articles are based on the principle that the debtor's property is the common pledge of his creditors.

25 Demolombe, Nos. 48-9.
La. Code, Arts. 3182, 3183.

I now turn to the case No. 299.

1. It is urged that executory process is a proceeding *in rem*, and that the circuit court can not entertain such a suit until it has acquired jurisdiction by service of process on the defendant.

The court will notice that the order for seizure and sale, if it may be called such, is dated *29th June, 1888*. The writ based on that order did not actually issue until *22d November, 1888*. (See supplemental transcript in 299, p. 2.)

Before the clerk can issue the writ the State practice requires that three days' notice be given to the debtor; and if the writ is issued prior to the expiration of the time specified in such notice, the proceeding is erroneous.

Hebert vs. Pike, 29 La. An. 262.

This notice was served on Fleitas, 30th June, 1888 (p. 12).

The writ was not actually issued, as I have stated, until 22d November, but three days before that time

Fleitas moved the court to quash the order it had given in June, 1888.

This motion to quash is not confined to the question of jurisdiction. Among other things, it invokes the action of the court *on the merits of the case*. In point of fact, the motion contains a demurrer to the proceeding on the ground "that said petitioner has in and by his showing, as exhibited and on file in this court, *made no such showing, and presented no such case as will warrant or allow executory process in this or any other court* in the State of Louisiana, in that by the terms of the pretended act of mortgage presented to the court by the petitioner, matters material, important, and which it was indispensable the court should consider and have made known to it by authentic evidence, are not only not presented to the court in any form of evidence whatsoever, but appears on the face of said pretended mortgage to have never been evidenced by authentic act of proof, but are recited to be contained in some document or act under private signature, and now for the first time made known to the court as an exhibit by this written motion, and made a part hereof" (p. 14). The document annexed is the memorandum of agreement between Fleitas and Shattuck & Hoffman, dated 28th January, 1884, which in no manner affects the authentic evidence of the loan of $63,000 represented by the notes given to Richardson.

It is perfectly true that in this motion, filed November 19, 1888, Fleitas says that he appears "for the purposes of this motion only, and in no manner submitting to the jurisdiction of the court in any particular, but at all times protesting that this court never in any manner obtained jurisdiction over said F. B. Fleitas or any lawful authority to make or enter any order or decree or award any process in the cause against said Fleitas or any order or process of seizure and sale," etc. (p. 14).

But the court had acquired jurisdiction over the defend-

ant by service of the notice on him in June, 1888; moreover, the issue raised on the merits in the motion filed 19th November, 1888, was a waiver of the question of jurisdiction.

A demurrer is an answer in law to a bill in chancery. New York vs. New Jersey, 6 Pet. 325.

And therefore, an objection to the proceedings, based on the ground that they were not supported by authentic evidence, such as the law required, was an abandonment of the objection to the jurisdiction of the court.

This was decided in Jones vs. Andrews, 10 Wall. 332, where it was held that a party could not object to the jurisdiction of the court, and at the same time ask a decision on the merits, as, for instance, the dismissal of the bill for want of equity.

It thus appears that the order or decree, dated the 7th December, 1888, directing the seizure and sale of the defendant's property, was rendered after full hearing of the defendant's objections. That decree is no *ex parte* order. The *ex parte* order made in June, 1888, did not authorize the sale of the property until the further order of the court. It was not executory process; but whatever it was, it is not the order from which the appeal is taken, until it was changed by the decree rendered on the 7th of December.

2. Was the evidence on which the court rendered its decree in December, 1888, authentic?

When a plaintiff asks to enforce his mortgage by executory process, the only evidence he is required to produce is the notarial act of mortgage and the notes identified with and secured by it. The identification is usually evidenced by the words "*ne varietur*," written by the notary across the face of the notes, as was done in this instance.

Armed with these muniments of his right, the mortgagee presents his petition for executory process, to which are an-

nexed the notes and mortgage, and the judge, on bare inspection of the documents, directs the process to issue; but the Code of Practice requires three days' notice to be given to the debtor before the issue and delivery of the writ of seizure and sale to the sheriff.

If the defendant appeals, the Supreme Court merely inspects the proceedings to ascertain whether the evidence on which the order was given is authentic. No other question is possible on an appeal. Every other defense requiring extraneous evidence must be raised by injunction or third opposition.

Dodd vs. Crain, 6 Rob. 58.
Shreveport vs. Flournoy, 26 La. An. 709.
Wood & Roane vs. Wood, 32 La. An. 803.

The only evidence required to obtain an order for executory process is a certified copy of the notarial act of mortgage, and the production of the original notes secured by it.

New Orleans vs. Pigniolo, 29 La. An. 835.
Insurance Co. vs. Lozano, 39 La. An. 321.
Miller, Lyon & Co. vs. Cappel, 36 La. An. 264.

The only defense urged by the defendant Fleitas is, that the agreement made with Shattuck & Hoffman, a copy of which is annexed to his motion, in some manner affected the right of Richardson to executory process. Richardson's debt was an absolute, existing debt, for a specific sum, represented by the notes held by him, and identified with his act of mortgage. These facts appear on the face of the mortgage itself. The future advances of Shattuck & Hoffman provided for in the agreement with Fleitas, and referred to in the mortgage, could not be fixed in amount, and were secured by a mortgage subordinate to that of Richardson, to whom priority is accorded by an express provision contained in the last promissory clause of the act of mortgage (page 24).

There was no authentic evidence of the debt due to Shattuck & Hoffman, under their agreement, and hence they were not entitled to executory process. But if their future advances had been secured by a mortgage note given to them as collateral, they would have been entitled to executory process to enforce payment of the note, to the extent of the debt due them, even though the amount thereof depended on extraneous evidence. If they claimed too much, the defendant would be driven in such case to his injunction.

Chaffe vs. Whitfield, 40 La. An. 630.

Lozano's case, 39 La. An. 321.

3. The mortgage creditor whose mortgage contains the *pact de non alienando*, that is to say, an agreement not to sell or alienate the mortgaged property to the prejudice of the mortgagee, may ignore all subsequent transfers, and proceed directly against the mortgagor as if there had been no change of ownership.

Troendle vs. Bouchel, 33 La. An. 753.

Succession of Thompson, 42 La. An. 118.

Hence, in this case Richardson was authorized to disregard the sale to Mrs. Fleitas, made by the sheriff of the parish of St. Bernard in 1887.

This he could do without giving notice to Mrs. Fleitas, or to any posterior or concurrent mortgagee, even if the mortgage had been intended to secure Richardson and Shattuck & Hoffman jointly.

Utz vs. Utz, 34 La. An. 753.

Soniat vs. Miles, 32 La. An. 164.

And two mortgages of different rank may be given in one act of mortgage.

Haynes vs. Courtney, 15 La. An. 630.

Rind vs. Fluker, 22 La. An. 483.

4. I presume the court denied the motion to dismiss the appeal of Fleitas, on the ground that the decree ren-

dered was a final decree, made after Fleitas had appeared and contested the right of the plaintiff to the order of seizure and sale.

This is the view taken in the case of Marin vs. Lally, 17 Wallace, p. 15, and hence I abstain from further discussion of the subject.

The Supreme Court of Louisiana fully explained the nature and character of an order of seizure and sale in Mitchell vs. Logan, 34 La. An. 1002, and Folger vs. Roos, 40 La. An. 604.

I will annex to this brief a copy of the opinion of the Supreme Court of Louisiana in the Klotz case, as the case is not yet reported.

Respectfully submitted,

THOS. J. SEMMES,

Counsel for Appellees.

APPENDIX.

SUPREME COURT OF THE STATE OF LOUISIANA.

NEW ORLEANS, Monday, Feb. 8, 1892.

The court was duly opened, pursuant to adjournment.

Present: Their Honors, Edward Bermudez, Chief Justice; Charles E. Fenner, Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, Associate Justices.

His Honor, Mr. Justice Breaux, pronounced the opinion and judgment of the court in the following case:

BERNARD KLOTZ
vs.
CHARLES MACREADY *et al.* } No. 10,910.

Appeal from the Civil District Court for the Parish of Orleans.

The defendant having obtained a judgment against the plaintiff for the sum of $31,341.65, with interest, subject to a *remittitur* of $624.42, and the sheriff in enforcing it having seized certain parcels of land, with the buildings and improvements thereon, Bernard Klotz & Co., a corporation limited, sued out an injunction restraining that officer and the defendants from proceeding further to dispose of the machinery and contents of a factory placed thereon by them while lessees.

The injunction was maintained, except as to machinery and certain implements, stated in the judgment, which were not placed on the said land by the lessees.

The evidence maintains the correctness of that judgment.

It will be affirmed.

The defendants in the proceedings before us sued William S. Benedict, Bernard Klotz and Lee Clark, and aver that their judgment has been duly recorded.

That in an act of sale dated the 9th of January, 1889, the price at which the property was sold to Bernard Klotz, by W. S. Benedict, was $50,000, of which $10,000 was paid in cash and the remainder was to be paid in notes of $1,000 each.

Nine of these notes have been paid. The mortgage securing them has not been cancelled.

They further aver, that there was a note of $10,000, secured by mortgage on the property, at the time of the sale which the vendor to Klotz promised to have cancelled. It was his indebtedness and an encumbrance on the property which he promised to cancel.

This note was held by Lee Clark, one of the defendants.

The plaintiffs, in their suit, claim the right to have the amount of the vendor's mortgage ascertained and fixed, and to compel the defendant, Benedict, to extinguish the note for $10,000, and cancel the mortgage on the property under seizure.

The defendants have filed separate answers.

Prior to answering, one of the defendants, Benedict, filed the plea of no cause of action.

In his answer he avers that the claim for $10,000 is valid, and that a tender of the amount due was made. It was not accepted.

The exception and merits were tried together.

Klotz, the vendee, denies the right claimed, and Lee Clark in his answer alleges that he is the holder of the note for $10,000, secured by privilege and mortgage, and prays to be paid by preference over all others.

Judgment was rendered in favor of plaintiffs, overruling the exception, and decreeing the mortgage in favor of W. S. Benedict, resulting from the act of sale by him to Bernard Klotz, dated January 9th, 1889, be reduced to the extent of $9,000, being the nine notes paid of $1,000 each.

He was also condemned to pay to Lee Clark the amount of the two notes and interest, and other charges secured by privilege and mortgage on the property as before mentioned.

The defendants, Benedict and Klotz, appeal.

The facts needful to the decision of the case are sufficiently set forth by the statement, that the amounts are due and secured as alleged, and that it is declared in the act of sale of January 9, 1889, that Benedict, the vendor to Klotz "promised to cancel the mortgage for $10,000 resting on the property he sold."

It is not alleged in the pleadings, nor was it contended in argument, that there were any equities between Klotz and Benedict.

Having sold the property and promised to cancel existing encumbrances, there can be no question as to the right of the purchaser to require compliance.

The agreement made was certain, fair and just.

It can not be renounced, to the detriment of his creditors, whose claims are secured by mortgage on the property.

Having a right, which he does not choose to enforce, the question arises as to whether his creditors, whose claim is secured by mortgage, can compel compliance.

The Civil Code does not in express terms authorize creditors to exercise all the rights and actions of their debtors.

This court has not heretofore decided, that only such rights and actions of creditors may be exercised as are expressed.

In Morris vs. Cain *et al.*, 35 An. 759. the proceed-

ings were in the nature of a bill of interpleader in chancery practice, not provided in our Code of Practice; "but under Article 21, Civil Code, and on general principles, this court has often held that the Code of Practice does not exclude all other remedies than those therein provided for, and that the courts will afford other appropriate remedies where not prohibited, and they have repeatedly enforced remedies identical with the one here invoked."

If not maintainable on equitable grounds, "there is a principle of the civil law obtainable in Louisiana, by the aid of which there can be no doubt of its being maintainable."

New Orleans vs. Gaines, 151 U. S. 213.

Fortier vs. Slidell, 7 Robinson, 399.

There are rights, says the Code, which the creditor can not exercise, even should the debtor refuse to avail himself of them. (Article 1991.)

The excepted rights do not include such a right as the one involved in this suit, for it is not similar.

The Civil Code expressly reserves to a creditor the right of intervention in all suits which may arise between usufructuary and the owner. (Article 623.)

He may cause to be annulled any renunciation, made by his debtor, of the usufruct, to his prejudice. (Article 624.)

He may accept an inheritance the debtor refuses or neglects to accept. (Articles 1021, 1990, Civil Code.)

Despite the debtor, he may plead prescription his debtor declines to plead or may choose to waive.

These rights are not exclusive.

The property of the debtor being the common pledge of his creditors.

The obligation being attached to immovable property being a right of property.

Privity, being the "mutual or successive relationship to the same rights of property," it is consistent with the

articles referred to, to include among the right of creditors that of compelling the vendor of property to his debtor to cancel a mortgage on property mortgaged to secure his claim, and which the vendor promised and obligated himself to cancel, instead of claiming it as a strictly personal obligation, when it is not a right of the debtor which the creditors can not exercise, such as requiring the separation of property between husband and wife, or compelling him to accept a donation *inter vivos*, etc. Civil Code, Article 1991.

It is not alleged, nor is it claimed by defendants, Benedict and Klotz, that specific performance is an issue involved in this case, to which they object.

The defense is a denial of any right of the debtor, against Benedict, which the creditor can have enforced; in other words, they contend that a creditor can not exercise the rights of his debtor, when the latter, to the detriment of the former's interest, fails to exercise them. That being the defence, to that extent we decide the issue, and hold that it is not a strictly personal obligation, but one the creditor can exercise.

A question of tender of an amount to take up the $10,000 secured by the mortgage the vendor promised to cancel, comes up as one of the issues.

The tender was made in the name of a third person; not shown to have had any interest.

The tender was made to the attorney of Lee Clark.

A question arose between the attorney and the party making the tender, about distinguishing the payment from a sale or transfer.

The attorney was without authority to transfer the note and merely change the creditor.

It was a matter of payment *vel non*.

Payment consists in the discharge of an obligation.

The attorney of the holder could, before accepting the amount, insist upon payment.